TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~266~~. 78

THE COUNTY OF CALLAWAY, STATE OF MISSOURI, PLAINTIFF IN ERROR,

vs.

THOMAS J. FOSTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 26, 1874.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the April term, 1874, thereof, between Thomas J. Foster against the county of Callaway, in the State of Missouri, a manifest error hath happened, to the great damage of the said county of Callaway, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington City, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 27th day of April, in the year of our Lord one thousand eight hundred and seventy-four.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the districts of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk C. C. U. S. Western Missouri District,
By C. M. WARD, *Deputy.*

Allowed by

JOHN F. DILLON, *Judge.*

b UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for said district, in obedience of the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States a full, true, and complete transcript of the record and proceedings had in the within cause, as fully as the same appear in my said office.

In witness whereof I have hereto set my hand and affixed the seal of said circuit court this 1st day of June, A. D. 1874.

[SEAL.] M. M. PRICE, *Clerk,*
By C. M. WARD, *Deputy.*

(Indorsed:) United States circuit court, western district of Missouri. Callaway County, plaintiff in error, vs. Thomas J. Foster, defendant in error. Writ of error. To the circuit court of the United States for the western district of Missouri. Returned and filed 187 . , clerk.

c The United States of America to Thomas J. Foster, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington City, D. C., on the 2d Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Missouri, wherein the county of Callaway is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John F. Dillon, judge of the circuit court of the United States for the western district of Missouri, this 27th day of April, in the year of our Lord one thousand eight hundred and seventy-four.

JOHN F. DILLON,
Judge United States Circuit Court Western District of Missouri.

(Indorsed:) United States circuit court, western district of Missouri. Callaway County, plaintiff in error, vs. Thomas J. Foster, defendant in error. Citation. Filed , 187 , , clerk.

We waive necessity of service of this citation. Apl. 27, 1874.
STEVENSON, EWING & SMITH,
For Pltf.

1 Be it remembered that, in vacation of the circuit court of the United States for the western district of Missouri, there was filed in the office of the clerk of said court, on the 26th day of March, A. D. 1873, a certain petition, in words and figures as follows, to wit:

2 In the circuit court of the United States for the western district of Missouri. April term, A. D. 1873.

THOMAS J. FOSTER, PLAINTIFF,
vs.
COUNTY OF CALLAWAY, DEFENDANT.

Plaintiff in the above-entitled cause states that he is a citizens of the State of Kentucky, and a resident of the county of Marion therein; that the defendant herein is a municipal corporation created by and under and in virtue of the constitution and laws of the State of Missouri, and is one of the counties of and in said State of Missouri, and is composed wholly of citizens of said State of Missouri, and is situate within the western district of Missouri.

3 Plaintiff further states that the defendant herein, on the first day of January, A. D. 1869, made its certain bond, in writing, under its seal, duly signed by the presiding justice of the Callaway County court, and attested by the clerk of said county court, which is herewith filed, whereby defendant, on the first day of January, A. D. 1873, promised to pay to the Louisiana and Missouri River Railroad Compay or bearer the sum of one hundred dollars, to bear interest from date at the rate of nine per centum per annum, payable semi-annually, on the first day of January and July in each year, as per coupon attached thereto, and after maturity to bear the same rate of interest until paid. Said principal sum and interest was made payable at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, Missouri.

That the plaintiff is the owner, bearer, and holder of said bond;

that the same was duly presented at the maturity thereof at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, in the State of Missouri, for payment, and payment refused; that defendant failed to pay said bond when due; that said bond remains due and unpaid; wherefore plaintiff demands judgment against defendant for the sum of one hundred dollars, and for all interest thereon which remains unpaid.

Plaintiff further states that the defendant herein, on the first day of January, A. D. 1869, made its certain other bond, in writing, under its seal, duly signed by the presiding justice of the Callaway County court, and attested by the clerk of said court, which is herewith filed, whereby defendant, on the first day of January, A. D. 1873, promised to pay to the Louisiana and Missouri River Railroad Company or bearer the sum of one hundred dollars, to bear interest from date at the rate of nine per centum per annum, payable semi-annually, on the first day of January and July in each year, as per coupon attached ther to, and after maturity to bear the same rate of interest until paid. Said principal sum and interest was made payable at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, Missouri.

That the plaintiff is the owner, bearer, and holder of said bond; that the same was duly presented at the maturity thereof at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, in the State of Missouri, for payment, and payment refused; that defendant failed to pay said bond when due; that said bond remains due and unpaid; wherefore plaintiff demands judgment against defendant for the sum of one hundred dollars, and for all interest thereon which remains unpaid.

4 Plaintiff further states that the defendant herein, on the first day of January, A. D. 1869, made its certain other bond, in writing, under its seal, duly signed by the presiding justice of the Callaway County court, and attested by the clerk of said county court, which is herewith filed, whereby defendant, on the first day of January, A. D. 1873, promised to pay to the Louisiana and Missouri River Railroad Company or bearer the sum of one hundred dollars, to bear interest from date at the rate of nine per centum per annum, payable semi-annually, on the first day of January and July in each year, as per coupon attached thereto, and after maturity to bear the same rate of interest until paid. Said principal sum and interest was made payable at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, Missouri.

That the plaintiff is the owner, bearer, and holder of said bond; that the same was duly presented at the maturity thereof at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, in the State of Missouri, for payment, and payment refused; that defendant failed to pay said bond when due; that said bond remains due and unpaid; wherefore plaintiff demands judgment against defendant for the sum of one hundred dollars, and for all interest thereon which remains unpaid.

Plaintiff further states that the defendant herein, on the first day of January, A. D. 1869, made its certain other bond, in writing, under its seal, duly signed by the presiding justice of the Callaway County court, and attested by the clerk of said county court, which is herewith filed, whereby defendant, on the first day of January, A. D. 1873, promised to pay to the Louisiana and Missouri River Railroad Company or bearer the sum of one hundred dollars, to bear interest from date at the rate of nine per centum per annum, payable semi-annually, on the first day

of January and July in each year, as per coupon attached thereto, and after maturity to bear the same rate of interest until paid. Said principal sum and interest was made payable at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, Missouri.

That the plaintiff is the owner, bearer, and holder of said bond; that the same was duly presented at the maturity thereof at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, in the State of Missouri, for payment, and payment refused; that defendant failed to pay said bond when due; that said bond remains due and unpaid; wherefore plaintiff demands judgment against defendant for the sum of one hundred dollars, and for all interest thereon which remains unpaid.

5 Plaintiff further states that the defendant herein, on the first day of January, A. D. 1869, made its certain other bond, in writing, under its seal, duly signed by the presiding justice of the Callaway county court, and attested by the clerk of said county court, which is herewith filed, whereby defendant, on the first day of January, A. D. 1873, promised to pay to the Louisiana and Missouri River Railroad Company or bearer the sum of one hundred dollars, to bear interest from date at the rate of nine per centum per annum, payable semi-annually, on the first day of January and July in each year, as per coupon attached thereto, and after maturity to bear the same rate of interest until paid. Said principal sum and interest was made payable at the Missouri Bond and Stock Board of St. Louis, in the city of St Louis, Missouri.

That the plaintiff is the owner, bearer, and holder of said bond; that the same was duly presented at the maturity thereof at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, in the State of Missouri, for payment, and payment refused; that defendant failed to pay said bond when due; that said bond remains due and unpaid; wherefore plaintiff demands judgment against defendant for the sum of one hundred dollars, and for all interest thereon which remains unpaid.

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That the plaintiff is the owner, bearer, and holder of said bond; that the same was duly presented at the maturity thereof at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, in the State of Missouri, for payment, and payment refused; that defendant failed to pay said bond when due; that said bond remains due and unpaid; wherefore plaintiff demands judgment against defendant for the sum of one hundred dollars, and for all interest thereon which remains unpaid.

5½ Plaintiff further states that the defendant herein, on the first day of January, A. D. 1869, made its certain bond, in writing, under its seal, duly signed by the presiding justice of the Callaway county court, and attested by the clerk of said county court, which is herewith filed, whereby defendant, on the first day of January, A. D. 1873, prom-

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That the plaintiff is the owner, bearer, and holder of said bond; that the same was duly presented at the maturity thereof at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, in the State of Missouri, for payment, and payment refused; that defendant failed to pay said bond when due; that said bond remains due and unpaid; wherefore plaintiff demands judgment against defendant for the sum of one hundred dollars, and for all interest thereon which remains unpaid.

6 Plaintiff further state' that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff state' that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and payment thereof was refused. Plaintiff state' that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

Plaintiff further state' that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff state' that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff state' that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

7 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff state' that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five , the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

8 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff state' that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

9 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

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10 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

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11 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff state' that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon, and four per cent. damages for non-payment.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five , the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff state' that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon, and four per cent. damages for non-payment.

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14 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of forty-five dollars, with interest thereon.

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15 Plaintiff further state' that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon;

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Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

36 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant

in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

37 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and the payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

38 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum or twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due,

although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

39 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

40 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, the sum of four dol-

lars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

41 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of forty-five dollars cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the National Bank of Commerce in the city of New York, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of forty-five dollars, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, State of Missouri, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

42 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defend-

ant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis and State of Missouri, the sum of twenty-two dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of twenty-two dollars and fifty cents, and for all interest thereon that remains due and unpaid.

43 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars & fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of four dollars & fifty cents, with interest thereon, and four per cent. damages for non-payment.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars & fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of four dollars & fifty cents, with interest thereon, and four per cent. damages for non-payment.

44 Plaintiff further state' that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a

certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant in the sum of four dollars and fifty cents, with interest thereon, and four per cent. damages for non-payment.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of four dollars and fifty cents, with interest thereon, and four per cent. damages for non-payment.

45 Plaintiff further state' that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of four dollars and fifty cents, with interest thereon, and four per cent. damages for non-payment.

Plaintiff further state' that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce, in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff state that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said de-

fendant for the sum of four dollars and fifty cents, with interest thereon, and four per cent. damages for non-payment.

46 Plaintiff further state' that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid, whereupon plaintiff ask' judgment against said defendant for the sum of four dollars and fifty cents, with interest thereon, and four per cent. damages for non-payment.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of four dollars and fifty cents, with interest thereon, and four per cent. damages for non-payment.

47 Plaintiff further state' that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of four dollars and fifty cents with interest thereon, and four per cent. damages for non-payment.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain

bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused; whereupon said coupon was duly protested for non-payment. Plaintiff states that said coupon still remains due and unpaid; whereupon plaintiff ask judgment against said defendant for the sum of four dollars and fifty cents, with interest thereon, and four per cent. damages for non-payment.

48 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

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defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

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50 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

51 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due

on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

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Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of

four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

53 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

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54 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date

last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against the defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

55 Plaintiff further states that the defendant herein, on the day of 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

56 Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the

sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, the sum of four dollars and fifty cents, the same being the interest due on the date last aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that the defendant has failed to pay said coupon when due, although the same was duly presented for payment on the said first day of January, 1873, at the Missouri Bond and Stock Board of St. Louis, at the city of St. Louis, and State of Missouri, and payment thereof refused; that said coupon remains due and unpaid; wherefore plaintiff demands judgment against defendant in the sum of four dollars and fifty cents, and for all interest thereon that remains due and unpaid.

57 Plaintiff further states the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff state' that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of four dollars and fifty cents, with interest thereon.

Plaintiff further states that the defendant herein, on the day of , 18 , made its certain other instrument in writing, commonly called a coupon, herewith filed, whereby defendant promised to pay to the bearer, on the first day of January, 1873, at the National Bank of Commerce in the city of New York, the sum of four dollars and fifty cents, the same being the interest due on the date aforesaid on a certain bond issued by the defendant, which said bond is therein mentioned. Plaintiff states that he is the owner, holder, and bearer of said coupon; that at the maturity of said coupon he caused the same to be presented at the National Bank of Commerce in the city of New York, on the first day of January, 1873, and payment thereof to be demanded, and that payment thereof was refused. Plaintiff state' that said coupon still remains due and unpaid; whereupon plaintiff ask' judgment against said defendant for the sum of four dollars and fifty cents, with interest thereon.

58 Plaintiff further states that the said several causes of action embraced in the said preceding counts amount in the aggregate to the sum of three thousand seven hundred and thirty-seven dollars, for which amount plaintiff demands judgment, together with all damages and interest due thereon.

JOHN D. STEVENSON,
EWING & SMITH,
For Plaintiff.

That attached to said petition is the following exhibit, to wit:

UNITED STATES OF AMERICA,
State of New York, ss:

On the 2d day of Jan'y, 1873, at the request of Northrup & Chick, I, John Hewett, a notary public, duly admitted and sworn, dwelling in the city of New York, did present the original coupons, Nos. 4, 5, & 12, hereto annexed, to the National Bank of Commerce in the city of New York, and demanded paym't thereof, who refused to pay the same, saying "No funds;" whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers and endorsers of said coupons,
59 as against all others it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred, or to be hereafter incurred, for want of paym't of the same.

Thus done and protested as aforesaid in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

[SEAL.] JOHN HEWETT,
Notary Public, 6 Wall st., N. Y.

UNITED STATES OF AMERICA,
State of New York, ss:

I, John Hewett, a notary public, duly admitted and sworn, dwelling in said city, do hereby certify that on the 3d day of Jan'y, 1872, notice of the protest of the before-mentioned coupons was served upon the county clerk and the presiding justice of the county court of Callaway County, Missouri, as follows: by depositing written notice thereof in the post-office in this city, and paying the postage thereon, addressed as follows: One to the presiding justice of Calloway County court, at Calloway County, Missouri, & one to the clerk of the Calloway County court, at the same place, those being the reputed places of
60 residences of said parties, and the nearest post-office thereto.

JOHN HEWETT,
Notary Public, N. Y. City.

And afterwards, to wit, on the 29th day of March, 1873, the clerk of said court issued the following summons, to wit:

WESTERN DISTRICT OF MISSOURI, *sct:*

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon the county of Callaway, in the State of Missouri, and a citizen of said district, that it be and appear before the honorable circuit court of the United States for the western district of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the 21st of April next, then and there to answer the complaint of Thomas J. Foster, a citizen of the State of Kentucky, as set forth in the petition filed in said court on the 26th day of March, A. D. eighteen hundred and seventy-three.

Hereof fail not, and have you then and there this writ.

61 Witness the honorable Salmon P. Chase, Chief-Justice of the

Supreme Court of the United States, the 29th day of March, A. D. eighteen hundred and seventy-three.

Issued at office in the city of Jefferson, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] ALFRED S. KREKEL,
Clerk of said Court.

Upon which said writ was endorsed the following return, to wit:

I certify that I executed the within writ, by delivering personally to James Rickenbaugh, county clerk of Callaway County, a copy of the within summons, together with a copy of the petition filed in the within cause, on the 1st day of April, 1873, at Fulton, Callaway County, in the western district of Missouri.

GEO. SMITH,
U. S. Marshal,
By SAML. O. TENNY,
Deputy.

And afterwards, to wit, at the April term, 1873, of said circuit court, and on the 23d day of said month, the parties herein filed the following stipulation, to wit:

In the circuit court of the United States for the western district of Missouri, April term, 1873.

62 THOMAS J. FOSTER, PLAINTIFF,
against
CALLAWAY COUNTY, DEFENDANT.

It is hereby agreed and stipulated, by and between the plaintiff and defendant in the above cause, that whenever any petition, answer, reply, or other pleading has been or may hereafter be filed therein by a party thereto, and the same contains several counts similar in language and effect, whether on bonds or coupons, the other party may plead to one of said counts in full, and such answer or pleading shall be taken and considered as al'o a like pleading, to all intents and purposes, to each and every of the other similar counts, whether on a bond or coupon, and on trial plaintiff shall exhibit and establish one bond and coupon, without being compelled to produce all the bonds from which coupons sued on have been severed.

GUITAR, REYNOLDS, LAY & BELCH, &
BOULWARE & FLOOD,
Attys. for Callaway County.
JNO. D. STEVENSON,
EWING & SMITH,
For Pltff.

And afterwards, to wit, at the said April term, and on the 23d day of said month, the defendant, by its attorneys, filed the following answer, to wit:

63 In the circuit court of the United States for the western district of Missouri, April term, 1873.

THOMAS J. FOSTER, PLAINTIFF,
against
CALLAWAY COUNTY, DEFENDANT.

Defendant, for answer to the petition of plaintiff, filed herein, denies

that she made the instrument of writing set out in the first count of said petition, or that she is indebted or liable to plaintiff, by virtue thereof, in the sum of one hundred dollars, or any other sum.

Defendant, further answering, states that h retofore, to wit, on the 10th day of March, 1859, by an act of the general assembly of the State of Missouri, the Louisiana and Missouri River Railroad was constituted a body corporate, with sundry powers, and among the rest the power to mark out and locate and construct a railroad from the city of Louisiana, in the county of Pike, by way of Bowling Green, in said county, to some suitable point on the North Missouri Railroad, intersecting said road between the southern limits of the town of Wellsburg, in Montgomery County, and the northern limits of the town of Mexico, in Audrain County; thence to the Missouri River, at the most eligible
64 point, on a line the most suitable and advantageous as regards distance, grade, and cost of road and permanent value of same.

Defendant further states that afterwards, to wit, on the 24th day of March, 1868, the general assembly of the State of Missouri passed a further act amendatory of said original charter, whereby it is provided that it shall be lawful for the said company to mark out, locate, and construct a branch of its said road, commencing at a point on the line thereof, to be selected by the board, not further east than the town of Bowling Green, in Pike County, running thence, by the most practicable and advantageous route, to a point on the Missouri River between the town of Saint Aubert, in Osage County, and the city of Boonville, in Cooper County. Said branch road shall be known and designated as the South Branch of the Lousiana and Missouri Railroad, and all subscriptions to the capital stock of said company, intended to be used in the construction of said branch, shall be made in separate books, opened, under the direction of the board, at such places as may be selected for that purpose. Such subscriptions shall specifically designate the objects for which they are made, and no part of the funds paid therein
,shall be used in the construction of the main line of said road,
65 but shall be faithfully applied to the building of such branch.

Defendant further states that no part of the main line touches her territory, but that said branch road is located through and over said territory.

Defendant further states that on the day of August, 1868, under color of authority derived solely under said amended charter, the county court of said county of Callaway, without having first submitted the question to the qualified voters of said county at a regular or special election held therein, and without having first obtained the assent of two-thirds of the qualified voters thereto, made a subscription of five hundred thousand dollars to the capital stock of the Louisiana and Missouri River Railroad, to and for the exclusive use of said south branch as provided *as provided* in the 22d section of the amended charter of said company.

Defendant further states that on the day of , 1870, under color of authority, solely derived from said amended charter, the county court of said county of Callaway, without having first submitted the question to the qualified voters of said county at a regular or special
election held therein, and without having first obtained the as-
66 sent of two-thirds of the qualified voters thereto, made subscription of one hundred and forty thousand dollars to the capital stock of the Louisiana and Missouri River Railroad, to and for the exclusive use and benefit of said branch road, as provided and authorized in the 22d section of the amended charter of said company, which sub-

scription, so made, was duly entered upon the subscription-books of said branch railroad.

Defendant further states that whether the bonds and coupons herein sued on were issued under said subscription made on the day of March, 1868, or under the subscription made on the day of , 1870, she has no knowledge or information thereof sufficient to form a belief.

Defendant further states that, in pursuance of said illegal subscriptions and furtherance thereof, said county court issued bonds, with coupons attached, amounting in the aggregate sum of six hundred and forty thousand dollars, which said bonds, with the coupons attached, were delivered, or caused to be delivered, to T. L. Price and divers other persons, by said court.

Defendant avers that the instrument sued on is one of the aforesaid bond', and that the same was made and delivered in manner afore-
67 said, and without any warrant or authority of law; and that plaintiff took said bond with due and legal notice of the fact that said subscription had been made and said bonds and coupons issued without the question of making said subscriptions, or either of them, having been first submitted to the qualified voters of said county, and without the assent of two-thirds of said voters having been first obtained, and without any election or vote whatever having been had, and in defiance of the provisions of the constitution of the State of Missouri, in such cases made and provided, and in defiance of the statute-law of said State. Wherefore defendant says that the plaintiff ought not to have and maintain his said action against her, and asks to be dismissed with her costs.

GUITAR, REYNOLDS, LAY & BELCH, AND
BOULWARE & FLOOD, *Attys. for Callaway County.*

And afterwards, to wit, at said April term, and on the 2d day of May, 1873, the plaintiff filed the following replication, to wit:

Circuit court United States, western dist. Mo.

68 THOMAS J. FOSTER, PLAINTIFF,
against
CALLAWAY COUNTY, DEFENDANT.

And for replication to defendant's answer, the plaintiff says he denies, as averred by defendant, that no part of the main line of the Louisiana and Missouri River Railroad passes over or touches the territory of Callaway County; but, on the contrary, the plaintiff avers that said Missouri River and Louisiana Railroad Company has constructed their line of railroad through Callaway County, in compliance with their contract with said county, as the same appears from the several orders of the county court of Callaway County, directing subscriptions to be made in behalf of said county to the capital stock of the Louisiana and Missouri River Railroad Company.

Plaintiff denies that the county of Callaway ever subscribed any stock to the capital stock of the south branch of the said Louisiana and Missouri River Railroad, either directly or for the use of the branch road; but, on the contrary, avers that each and every subscription made by said county was made to the stock of the Louisiana and Missouri River Railroad Company, and not to the stock of the south branch
69 thereof, as alleged by defendant.

Plaintiff further denies that the instruments of writing sued on by plaintiff, as well as the bonds and coupons, were issued in payment of subscriptions to the capital stock of the south branch of the Louisiana and Missouri River Railroad Company; but, on the contrary, said bonds were issued to pay for stock subscribed to the capital stock of the Louisiana and Missouri River Railroad Company.

Plaintiff says that said subscription' to the capital stock of the Louisiana and Missouri River Railroad Company were made in virtue and by authority of an act of the general assembly of the State of Missouri, entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10th, 1859, and that no law of the land required that the subscription should be submitted to the qualified voters, or that their assent thereto should be obtained.

Plaintiff, for further reply, says that he is the holder of the bonds and coupons sued upon for value, having purchased the same in open market, without notice of any irregularity or illegality in the making or issuing the same; that since the making and issuing said bonds
70 and coupons, the defendant has received certificates of stock of the said Louisiana and Missouri River Railroad, to the full amount of its said subscription to the stock thereof, (vote and control the same,) has levied and collected taxes to pay, and has paid, the interest thereon from time to time, and a part of the principal of the bonds issued in accordance with their subscriptions; and by said acts said defendant is estopped from denying the validity and legality of the instruments sued on.

For further reply, plaintiff say' that, at the time of the making of the subscription to the capital stock of the Louisiana and Missouri River Railroad Company, to wit, on the 16th day of January, 1868, the said company had surveyed their line of road through Callaway County, and said subscription was made upon the express condition that said Louisiana and Missouri River Railroad Company would locate and construct the railroad over the line as the same is set forth and expressed in the original orders making said subscription; and, in accordance with said conditions, said company have located and built said railroad, and are now operating the same along and through Callaway County;
71 and, having fully replied, prays judgment.

STEVENSON, EWING & SMITH,
For Plaintiff.

And afterwards, at said April term, and on the 3d day of May, 1873, the said parties filed the following stipulation, to wit:

U. S. circuit court of western district of Missouri.

KIRKBRIDE *vs.* CALLAWAY COUNTY.
SELIGMAN *vs.* " "
SHORES *vs.* " "
FOSTER *vs.* " "

It is stipulated and agreed by and between the attys. for plaintiffs and defendants in the above causes, the same shall be tried by the court, and the right to demand a jury to try the same is hereby waived.

GUITAR, LAY, REYNOLDS, BOULWARE & FLOOD,
For Defendant.
STEVENSON, EWING & SMITH,
Attys. for Plaintiffs.

And at the term, and on the day last aforesaid, the said parties filed the following stipulation, to wit:

In the circuit court of the United States for the western district of Missouri.

72 J. KIRKBRIDE *vs.* CALLAWAY COUNTY.
P. SELIGMAN *vs.* CALLAWAY COUNTY.
J. F. SHORES *vs.* CALLAWAY COUNTY.
THOMAS J. FOSTER *vs.* CALLAWAY COUNTY.

It is hereby stipulated and agreed, between the undersigned, attys. of record for the plaintiffs and the defendant in the above causes, that said causes shall be heard, tried, and argued together; and that on the trial thereof, certified copies, now filed, of all the orders of the county court of Callaway County, touching or relating to the subscriptions made by the county court of said county to the Louisiana and Missouri River Railroad Company; the issue of bonds in payment thereof; the location of said road and its branch; and all other matters in any wise connected therewith, shall be admitted and considered as evidence in said cases.

And it is hereby further stipulated that the matters and things as hereinafter stated and set out shall be taken as confessed and established on the trial of said causes, viz: That on and before the 16th day of January, 1868, said company had surveyed several lines of road, some of which passed through the territory of Callaway County, and others through the territory of Boone and Howard Counties, and not
73 touching the territory of Callaway County; that, subsequently to the date last aforesaid, said company located and built the road now operated, now running from Louisiana, in Pike County, to Mexico, in Audrian County, and located and graded throughout; and partially completed the road running from Mexico to Glasgow on the Missouri River, and the road running and operated from Mexico in Audrian County, by way of Fulton, through Callaway County, to a point on the Missouri River opposite Jefferson City; that the county court of Callaway County, who made the subscriptions, have paid interest on the bonds issued in payment thereof for the years 1870 & 1871, and a small part of the principal; that the county court since elected have refused since said last-named date to pay either the principal or interest due on said bonds; that in September, 1869, the tax-payers and citizens of Callaway County instituted in the circuit court of Callaway County, in the name of the State, their action, now pending, against said Louisiana and Missouri River Railroad Company, the county court of Callaway County, and Thomas L. Price, their financial agent, defendants; it being averred, in the bill filed in said cause, that said bonds had been issued without authority, and in violation of the constitution
74 and laws of Missouri, and praying for a decree that said county court and the said Thomas L. Price should be compelled to deliver up and surrender said bonds, and that the same should be cancelled; that the orders subscribing $500,000 should be annulled and set aside, and that said court should be restrained from making further subscription, and from levying taxes to pay that already made, and for general relief; and it is further admitted that the tax-payers or qualified voters of Callaway County have never voted upon the making of said subscriptions or given their assent thereto, and, further, that the plaint-

iffs in said several causes are the owners and holders, for value, of the bonds and coupons sued on.

STEVENSON, EWING & SMITH,
Attys. for Plffs.
GUITAR, LAY, BOULWARE, FLOOD & REYNOLS,
Attys. for Deft.

And afterwards, to wit, at the November term, 1873, the said cause was submitted to the court, and continued under advisement until the April term, 1874, of said court, at which said last-mentioned term, and on the 25th day of April, 1874, the following special finding of facts
75 and judgment were filed, having been allowed and signed by the court, and made part of the record herein, to wit:

In the circuit court of the United States for the western district of Missouri.

THOMAS J. FOSTER, PLAINTIFF,
vs.
CALLAWAY COUNTY, DEFENDANT.

A jury in this cause having been waived by the parties, under a stipulation in writing signed by their respective attorneys of record, and filed with the clerk of this court, and the trial and determination of the issues of fact in said cause having by said stipulation been submitted to the court without the intervention of a jury, the court, from the evidence, finds (under the act of Congress of March 3d, 1865,) specially the following facts:

1st. That the following is a copy of one of the bonds sued on, the others in suit being of like tenor and effect, except as to the amounts and time of payment, viz:

UNITED STATES OF AMERICA.

No. 299.] STATE OF MISSOURI. [$100.

Callaway County railroad bond.

On the first day of January, A. D. 1873, the county of Callaway promises to pay to the Louisiana and Missouri River Railroad Company or bearer, the sum of one hundred dollars, to bear interest
76 from date at the rate of nine per centum per annum, payable semi-annually on the first day of January and July in each year, as per coupons attached hereto, and after maturity to bear the same rate of interest until paid, said principal sum and interest being payable at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, Missouri.

This bond is issued by Callaway County, by authority of an act of the general assembly of the State of Missouri, approved March 10, 1859, as amended by an act approved March 24, 1868.

Witness my hand and seal of said county affixed, this first day of January, 1869.

[SEAL.] GEO. BARTLEY,
Presiding Justice of the Callaway County Court.

Attest:
W. H. BAILEY,
Clerk of the Callaway County Court.

2d. That the following is a copy of one of the coupons sued on, to wit:

$4.50.] [$4.50.

On the first day of January, 1873, Callaway County will pay to bearer the sum of four and $\frac{50}{100}$ dollars, at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, Mo., interest on railroad bond No. 299.

GEO. BARTLEY,
77 *Presiding Justice of Callaway County Court.*

W. H. BAILEY,
Clerk of Callaway County Court.

The other coupons in suit are like the above, and are of the number and character set out in the plaintiff's petition.

3rd. That the plaintiff is the owner and holder of all the said bonds and coupons sued on, for value, and produced the same at the trial.

4th. That on and before the 16th day of January, 1868, said railroad company named in the bonds had surveyed several lines of road, some of which passed through the territory of Callaway County and others passed through the territory of Boone and Howard Counties, and not touching the territory of Callaway County; that subsequent to the date aforesaid said company located and built the road now operated, running from Louisiana, in Pike County, to Mexico, in Audrain County, and located and graded throughout and partially completed the road running from Mexico to Glasgow, on the Missouri River; and after the said 16th day of January, 1868, said company built and completed and now runs and operates a railroad from Mexico, in Audrain County,
78 by way of Fulton, through Callaway County, to a point on the Missouri River opposite Jefferson City.

5th. That the county court of Callaway County, which made said subscriptions, has paid interest on the aforesaid bonds thus issued in payment for said subscription for the years 1870 and 1871, and a small part of the principal, and that the county court since elected has refused, since said last-named date, to pay either interest or principal on said bonds; that in September, 1869, the tax-payers and citizens of Callaway County instituted in the circuit court of Callaway County, in the name of the State, their action now pending against said Louisiana and Missouri River Railroad Company, the county court of Callaway County, and Thomas L. Price, their financial agent, defendants, it being averred in the bill filed in said cause that said bonds had been issued without authority and in violation of the constitution and laws of Missouri, and praying for a decree that said county court and the said Thomas L. Price should be compelled to deliver up and surrender said bonds, and that the same should be cancelled, and the orders of the Callaway County court subscribing five hundred thousand dollars be annulled and set aside, and that said court should be restrained from
79 making further subscriptions and from levying taxes to pay that already made, and for general relief.

6th. That the tax-payers or qualified voters of Callaway County have never voted upon the making of said subscriptions or given their assent thereto, and no election for that purpose was ever called or held in said county.

7th. That the following constitute all, and the only orders, touching and relating to the subscriptions made by the county court of Callaway County to the Louisiana and Missouri River Railroad Company, and

touching or relating to the issue of bonds in payment thereof, the location of said road and the so-called branch, and all other matters in any wise connected therewith, viz:

STATE OF MISSOURI,
County of Callaway, ss:

In the county court in and for the county aforesaid, on the 16th day of January, 1868, the following order was made, to wit:

"It is ordered by the court that Thomas B. Harris be, & he is hereby, appointed commissioner and agent of the county of Callaway to take stock in and to subscribe to the capital stock of the Louisiana and Missouri River Railroad Company, the sum of five hundred thousand dollars, being five thousand shares, of one hundred dollars each, of said capital stock, said subscription to be paid by the issue of county bonds, which said bonds, as hereby ordered, shall issue in such sums, and payable at such dates as the court may direct, to run not exceeding fifteen years from the issuing thereof, bearing not less than nine per cent. per annum—payable semi-annually; said sum so subscribed and to be issued to said company in Callaway County bonds as aforesaid, as may be required by said railroad company during the progress of the construction of said railroad from some point west or southwest of the North Missouri Railroad on either the Wellsville or Jefftown routes, as surveyed through said county through the city of Fulton and by way of New Bloomfield, as near as practicable, to the Missouri River; and it is further understood that the county of Callaway will guarantee the right of way on either of said routes aforesaid through said county to said railroad company; and it is further declared that the conditions upon which this subscription is based are that the funds shall be used exclusively in the building and construction of that part of the road lying west or southwest of the North Missouri Railroad on either of the routes aforesaid, as the same may be adopted and located, and as said work progresses said appropriation shall be met by the issue of bonds, as the construction and building of that part of said road, as may be shown by the reports of said company to this court from time to time, may demand. And also said railroad company shall make, keep, and main a depot at the city of Fulton, on the east side of Town Creek, within the corporate limits of the city of Fulton."

And in the county court, in and for the county aforesaid, on the 17th day of June, 1868, the following order was made, to wit:

"It is ordered by the court that the order of the board of directors of the Louisiana and Missouri River Railroad Company, in accepting the amended charter of said company and locating the road thereunder, be, and the same is hereby, ratified and approved by this court, and the commissioners for Callaway County are hereby authorized and instructed to transfer the stock taken by said commissioners in the capital stock of said company to the branch books of said company in accordance with the provisions and stipulations thereof, subject, however, to such restrictions and conditions as set forth in the order authorizing the original subscription, and such other conditions and stipulations as may be made hereafter by the board of directors of said company and this court."

In the county court, in and for the county aforesaid, on the 21st day of September, 1868, the following proceedings were had, to wit:

"Thomas B. Harris, commissioner and agent of Callaway County, this

day reported to the court that he had, in accordance with the order of this court, made of the 17th day of June, 1868, transferred the stock taken by said commissioner, in the capital stock of said company, to the books of the branch road of said company, which report is approved by the court."

And in the county court, in and for the county aforesaid, on the 28th day of October, 1868, the following order was made, to wit:

"Whereas, by an order of this court, made on the 16th day of January, 1868, Thomas B. Harris was appointed a commissioner to subscribe to the capital stock of the Louisiana and Missouri River Railroad Company the sum of $500,000.00 *dollars*, wherein it is further provided that said subscription shall be paid by the issue of and delivery of the bonds of the county of Callaway, in such sums and payable at such dates as this court might direct, provided that such bonds be applied to
83 the payment and for the construction of said road as the work thereon progressed; and whereas said Thomas B. Harris, commissioner as aforesaid, did, in accordance with authority in him vested by said order, subscribe to the capital stock of said railroad company the said sum of $500,000.00 *dollars*, on the 16th day of January, 1868; and whereas said commissioner was afterwards, to wit, on the 17th day of June, 1868, authorized and empowered by this court, by its proper order of record, to transfer said stock of $500,000.00 *dollars* from the books of the Louisiana and Missouri River Railroad Company, to the books open for subscriptions to the capital stock of the South Branch of the said L. & Mo. R. R. Company, which transfer the said commissioner made on the day of , 1868:

It is, therefore, ordered by the court that the sum of 500,000 dollars in bonds of the said county of Callaway be issued and placed in the hands of commissioners hereinafter named, of the denominations and due and payable as follows, to wit: 100,000 dollars in bonds of the denomination of 100.00 dollars each—10,000 dollars of which shall be due and payable on the first day of January, 1870; 15,000 dollars to be due and payable on the first day of January, 1871; 20,000 dollars *dollars* to be due and payable on the first day of January, 1872; 25,000 dol-
84 lars to be due and payable on the first day of January, 1873; 30,000 dollars to be due and payable the first day of January, 1874: 120,000 dollars in bonds of the denomination of two hundred dollars each—35,000 dollars of which shall be due and payable on the first day of January, 1875; 40,000 dollars to be due and payable the first day of January, 1876; and 45,000 dollars on the first day of January, 1877: and 105,000 dollars in bonds of the denomination of 500 dollars each—50,000 dollars of which shall be due and payable on the first day of January, 1878; and 55,000 dollars on the first day of January, 1879; 175,000 dollars in bonds of the denomination of 1,000 dollars each—60,000 dollars of which shall be due and payable on the first day of January, 1880; 65,000 dollars to be due and payable on the first day of January, 1881; and 50,000 dollars to be due and payable on the first day of January, 1882; and it is further ordered that said bonds shall bear interest from date at the rate of nine per cent. per annum, payable semi-annually on the first days of January and July of each year, at the Missouri bond and stock board of St. Louis, in the city of St. Louis, Missouri; said bonds to have coupons attached, with the amount of the interest
85 due thereon for every six months, after the date of the issue thereof, which said bonds shall be signed by the presiding justice of

the county court of Callaway County, and shall be attested by the clerk thereof, with the county seal affixed.

And it is further ordered that, after the execution of the bonds as aforesaid, the same be placed in the hands of Thomas B. Harris, Thomas B. Nesbit, and Zadoc Hook, who are hereby appointed commissioners and agents of the county of Callaway, to receive and hold in their possession said bonds, and deliver over said bonds to the board of directors of the said Louisiana and Missouri River Railroad Company, as said work progresses, to be applied to the payment of the construction of said south branch of the Louisiana and Missouri Railroad, as the work thereon progresses, and in strict accordance with the order of this court, made January 16, 1868; and it is further provided that payment thereof shall be made pro-rata for the work done on the entire line of said South Branch road throughout the entire line of said South Branch Road from the North Missouri Railroad to the Missouri River; and said commissioners are hereby further authorized and empowered to solicit further subscriptions for the benefit of said South Branch Road.

86 Said bonds shall be numbered from one to the highest number due at any one time; the bonds due on the first day of January, in each year, shall begin with number one, and shall be entered by number, date, and amount in a book provided for that purpose; and said clerk shall place on each bond the seal of the county court of Callaway County, with the word attest engraved over his written signature on the face of said bonds, and said bonds, after being so entered by number, date, &c., shall be delivered to him by said commissioners, and he shall take their receipt therefor, to be filed and recorded in his office; said coupons shall have attached to them the engraved signature of the presiding justice and clerk of said Callaway County court, and each coupon bearing the number of the bond to which the same is attached."

And in the county court, in and for the county aforesaid, on the 17th day of February, 1869, the following order was made, to wit:

"Whereas a proposition having been made upon behalf of the county of Audrain, at the last term of this court, through Charles H.

87 Hardin, commissioner for said county, to the effect that the contemplated route of the South Branch of the Louisiana & Missouri River Road by way of Jefftown, in Audrain County, to the Missouri River, be changed to what is denominated the Mexico route; and said proposition having been taken under advisement from the last term of this court, after due consideration it is deemed unadvisable to make the proposed change in said route, and that the engineer corps now finally locating said road adhere to the present survey upon the Jefftown route, with such local changes on the line of said route as may be made necessary to save expense; and that they adopt in such local changes such route at or near New Bloomfield as will not interfere with the business of said town, as near as practicable for the convenience of the same, going east of the grave-yard, which is located west of said town of New Bloomfield, if possible.

"It is ordered that Judge Hockady have leave to enter his dissent to the foregoing order."

In the county court in and for the county aforesaid, the 19th day of February, 1869, the following order was made, to wit:

"It is ordered by the court that the presiding justice and clerk

of this court proceed to sign the bonds of Callaway County, issued to pay for the building and construction of the South Branch of the Louisiana and Missouri River Railroad, as soon as may be thought proper by said justice and clerk, and when signed and sealed, the same shall be placed in the vault in the office of the county clerk, in the iron safe belonging to the county, which is to be placed in said vault; said bonds to be delivered to the commissioners of said South Branch Railroad, appointed for and in behalf of our said county by this court, in such numbers and for such amounts, from time to time, as this court may direct."

And in the county court, in and for the county aforesaid, on the 17th day of March, 1869, the following order was made, to wit:

"It is ordered by the court that so much of an order of this court made on the 28th day of October, 1868, in regard to the bonds of the county of Callaway, issued for the building and construction of the South Branch of the Louisiana and Missouri Railroad, which requires the payment for the building of said South Branch Road shall be pro-rata for work done on the entire line of said branch road, from the North Missouri Railroad to the Missouri River, be, and the same is, by this order removed and of no effect; and said bonds will be paid over to the directors of said railroad company upon the report of the engineer of said company, as required by the order of this court, made on the 16th day of January, 1868, without regard to the pro-rata clause of said first-mentioned order."

And in the county *county* court, in and for the county aforesaid, on the 23d day of April, 1869, the following order was made, to wit:

"It is ordered by the court that Thomas L. Price be, and he is, appointed an agent on the part of Callaway County to negotiate 200,000 dollars of the bonds of Callaway County, issued to pay for the building and construction of the South Branch of the Louisiana and Missouri River Railroad at a price that the contractors are willing to take in cash, in the place of the said bonds at par; the same to be done by the said Price at his own cost, and at no cost whatever to said county; and it is further ordered that when said Price shall have notified this court that he has negotiated said bonds as above expressed, then this court will appoint an agent or receiver to deliver said bonds and receive the money therefor, which money shall be deposited by the agent so appointed in the bank of W. T. Suell, in Fulton, Callaway County, Mo., subject to the order of this court."

And in the county court, in and for the county aforesaid, on the 18th day of May, 1869, the following order was made, to wit:

"It is ordered by the court, that the presiding justice and clerk of this court be, and they are hereby, empowered and authorized to pay over to the Louisiana and Missouri River Railroad Company bonds of the county in sufficient amount, with the interest due thereon, to meet the monthly estimates of work done on said road immediately upon the receipt of such estimates, properly authenticated, as directed by the order making the subscription for the building of said road."

And in the county court, in and for the county aforesaid, on the 19th day of May, 1869, the following order was made, to wit:

"It is ordered by the court, that Wm. H. Bailey, clerk of this court, proceed to fill the blanks in the bonds issued for the construction of the

Louisiana and Missouri Railroad with the words 'Missouri Bond
91 and Stock Board of St. Louis, and that he do so by writing the said words in said blanks, or at his option have said bonds reprinted at his own expense."

And in the county court, in and for the county aforesaid, on the 22d day of May, 1869, the following order was made, to wit:

"It is ordered by the court that a tax of one and a half per cent. be levied on all property and license made taxable by law for State purposes, and placed in a separate column of the tax-book by the clerk, and collected by the collecter as other taxes, for the payment of the interest falling due in July, 1869, January, 1870, and July, 1870, on the bonds issued to pay for the building of the South Branch of the Louisiana and Missouri River Railroad, as also to pay the bonds, the principal of which falls due Jan'y 1, 1870."

And in the county court, in and for the county aforesaid, on the 22d day of June, 1869, the following order was made, to wit:

"Whereas Messrs. Bartley and Dunn, justices of the county court of Callaway County, on the day of June, 1869, met T. L. Price, one of the contractors to build the South Branch of the Louisiana and
92 Missouri River Railroad, and after a free and full interchange of opinions in regard to the best interest of said branch road, it was believed to be the interest of the county to place in the hands of the said Price 200,000 dollars of said bonds for negotiation and sale; and the said Price having entered into bond to the county, with security approved by this court for the faithful observance of the trust set out in said bond of the said Price; and whereas the said Bartley and Dunn, justices as aforesaid, did deliver to the said Price the said sum of 200,000$ in said bonds: It is therefore ordered, that the said transaction be approved by this court, and spread upon the records of the same."

And in the county court, in and for the county aforesaid, on the 19th day of October, 1869, the following order was made, to wit:

"Whereas this county, by its proper entry of record, did, on or about the 22d day of June, 1869, appoint General T. L. Price the financial agent of Callaway County, to negotiate the sale of two hundred thousand dollars of the bonds of Callaway County, issued for the construction and building of the South Branch of the Louisiana and Missouri River
93 Railroad; and whereas there was placed in the hands of the said railroad agent as aforesaid 200,000 dollars for negotiation as aforesaid; and whereas the said Price has been unable up to this time to make any negotiation satisfactory to the parties concerned, and not likely soon to do so: It is therefore ordered, that the said Price return said bonds to the custody of the clerk of this court without delay, and upon so doing the clerk is authorized to deliver up to the said Price his obligation as such agent."

And in the county court, in and for the county aforesaid, on the 20th day of November, 1869, the following order was made, to wit:

"It is ordered that Thos. L. Price, financial agent of Callaway County, have further time to negotiate the bonds heretofore placed in his hands for negotiation; provided, however, that the coupons due in January, 1870, be first cut from said bonds, and safely returned to the office of the clerk of the county court."

And in the county court in and for the county aforesaid, on the 21st day of December, 1869, the following order was made, to wit:

"It is ordered that the following railroad bonds, numbered from 4 to 36, inclusive, dated Jan'y 1, 1869, due Jan'y 1, 1870, for $100.00 each,
94 be cancelled and filed, they having been paid for with the surplus railroad funds of 1869; and it is further ordered that bonds No. 74, 75, 105, 106, & 107, due Jan'y 1, 1879, for $500.00 each be cancelled, and filed as above; and it is further ordered that bonds No. 31, 32, 33, & 34, due January 1, 1878, for $500.00 each, be cancelled and filed as above; and it is further ordered that bonds No. 69 to 102, inclusive, due Jan'y 1, 1873, for $100.00 each, be cancelled as above; and it is further ordered that bonds No. 68 to 118 inclusive, due Jan'y 1, 1872, for $100.00 each, be cancelled as above; and it is further ordered that bonds No. 22 to 39, inclusive, due Jan'y 1, 1872, for $100.00 each, be cancelled as above; and bonds No. 157 to 187, inclusive, due Jan'y 1, 1872, for $100.00 each; and also bonds No. 133 to 143, due Jan'y 1, 1872, for $100.00 each, be cancelled.

And in the county court, in and for the county aforesaid, on the 20th day of January, 1870, the following order was made, to wit:

"It is ordered that the railroad bonds of the denomination of $1,000.00 be issued in lieu of those heretofore issued of the denomination of $200, $500.00, & $1,000.00, and said one-thousand-dollar bonds last named
95 are made payable at the National Bank of Commerce in the city of New York; and it is further ordered that the clerk be authorized to exchange the new issue for any of the old issue, of the denominations above stated, which have been paid out; provided, however, that Thomas L. Price pay all the expense incurred to carry this re-issue and exchange into effect."

And in the county court, in and for the county aforesaid, on the 20th day of January, 1870, the following order was made, to wit:

"It is ordered that two hundred thousand dollars of the new issue of Callaway County railroad bonds be delivered to Thomas L. Price, financial agent of Calloway County, in lieu of those heretofore placed in his hands for negotiation and sale; and it is further ordered that the said Price give a new bond for the faithful performance of the trust reposed in him; and thereupon the said Price presented to the court, through D. P. Bailey, his bond as such agent, in the sum of two hundred & fifty thousand dollars, with J. T. Rogers, John Logan, Zadoc Hook, George Kennedy, Wm. C. Rickey, C. W. Samuels, Thomas B. Harris, and Wm. Corrington as his securities; which bond is approved.

And the county court in and for the county aforesaid, on the
96 20th day of January, A. D. 1870, the following proceedings were had, to wit:

The court this day made settlement with the collector on account of the railroad fund for the year 1869, and find that said collector has been charged with the sum of.....		$69,646 83
And that said collector has paid over according to the orders of the court	$47,378 47	
That there is delinquent on land list.....	15,435 64	
That there is delinquent on personal list....	897 58	
That there are erroneous assessments.....	882 98	

That said collector is entitled to commissions	2,063 33	
That paid into the county treasury, as directed	3,448 50	
		$70,106 50
And the court further finds that said collector has overpaid		$459 67

In the county court, in and for the county aforesaid, on the 20th day of January, 1870, the following proceedings were had, to wit:

W. H. Bailey, clerk, this day made settlement with the court on account of money belonging to the railroad fund, placed in his hands to purchase bonds issued to build the South Branch of the Louisiana and Missouri River Railroad, pay interest due and expenses incurred in so doing. The court finds that there has been paid to him for the purposes aforesaid the sum of $28,008 00

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That said Bailey has bought bonds to the amount of	$19,000 00	
Which were counted and cancelled.		
That he has paid interest coupons	1,791 00	
And for further sum on bonds	800 00	
And for further sum on coupons	585 00	
And bonds due in Jan'y, 1870	300 00	
And coupons on same	13 50	
And deposited in the bank of Allen, Copp & Nisbet	8,000 00	
Cash retained	85 00	
Interest on amount deposited	280 00	
		$30,854 50
To amt. paid Bailey, bro't down		28,008 00
		$2,846 50
Costs & expenses		60 75
Net profit to the county in the transaction		$2,787 75

And in the county court, in and for the county aforesaid, on the 18th day of May, 1870, the following order was made, to wit:

It is ordered that a tax of one and one-fourth of one per cent. be, and is hereby, levied on all property and licenses made taxable for State purposes, to pay the railroad bonds which fall due in January, 1871, and the interest due on all outstanding bonds for railroad purposes which fall due in January and July, 1871.

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In the county court, in and for the county aforesaid, on the 19th day of May, 1870, the following order was made, to wit:

"It is ordered by the court that the location of the L. & Mo. R. R. R., so far as made, be considered permanent, and to secure the early completion of said road it is further ordered, that the board of directors be, and they are hereby, authorized to construct, equip, and run the South Branch of said L. & Mo. R. R. R. to any point on the main line embraced within the terms of the charter; provided, however, that the divergence from the line embraced within the subscription made to the capital stock of said , on the 16th day of January, 1868, and confirmed on day of , 186 , be made at the farthest point north of said line that may be consistent with a direct, cheap, and convenient route to the western terminus or point of junction with said line, as indicated in the

charter of said road; and provided, also, that the subscription of ($100,-
000) one hundred thousand dollars, made by the County
99 court of Audrian County, to aid in the construction of said South
Branch, be placed in such shape as to be made immediately available in the construction of said South Branch, from the point of divergence, as above mentioned, to the main line of said L. & Mo. R. R. R.; and also further provided, that the board of directors of said road are not hereby instructed to make such change as above described provided that similar or sufficient aid can be obtained on the route as defined by the original subscription of this court, above mentioned, to grade, tie, and otherwise prepare the road-bed of said South Branch from the main line to the northern boundary of Callaway County, but in that case the board of directors are not restricted to any of the routes as above described, and there shall be no unnecessary delay in the execution of this order. And it is further ordered, that the work on the road shall not be abandoned at any point already located within the county, but shall be prosecuted vigorously to completion along the line as already located, from the Missouri River to Freebaugh's Crossing on the Auxvasse."

And in the county court in and for the county aforesaid, on the 20th day of June, 1870, the following order was made, to wit:

100 "It is ordered that the services of Thomas L. Price, as financial agent of Callaway County, to sell certain railroad bonds of Callaway County, issued to build and construct the South Branch of the Louisiana and Missouri River Railroad, be, and are hereby, and from this time, dispensed with; and said Price is required to forthwith return said bonds to the care and custody of the clerk of this court."

And in the county court in and for the county aforesaid, on the 20th day of June, 1870, the following order was made, to wit:

"Whereas an order was made at the May term, 1870, confirming the location of the S. B. of L. & Mo. R. R. R. to Ferebaugh's Crossing on the Auxvasse, and leaving it to the discretion of the board of directors of said road to locate said South Branch to any point on the main line within the limits of the charter, running on the original line to Swan's Prairie, under certain restrictions; and whereas the order was rejected by the said board of directors, and, contrary to the expressed orders of this court, work was suspended on the Auxvasse to await further action of this court: Therefore it is ordered, that the letters and protests
of the members of this court to H. V. P. Block, president L. &
101 Mo. R. R. R., on the third of June, 1870, are hereby made the official action of this body, and the clerk is hereby instructed to spread a copy of said letter on the records of this court; and it is further ordered that the prompt action of the pres't and engineer of the said road, in compliance with the request of this court not to suspend work on the S. B. of said road, in ordering the work to go forward on the Auxvasse, is hereby approved, and this court will sustain the pres't and engineer in refusing to enforce the order of the board of directors, adopted at Mexico, June 2d, 1870; which said order of said board of directors stopping the work in this county north of Richland church, or any propositions in reference thereto, will not be entertained by this court in any form whatever. We regard said action of said board as utterly at variance with the subscription of this county to the capital stock of said road, and is in direct opposition to the order

of this court, made at the May term, 1870, which said order was made by this court for the purpose of securing the immediate completion of our road. This court will not make any order nor entertain any proposition which would endanger the early construction of said South Branch, nor will it consent to place said road in such a position
102 that it cannot be finished on the line defined by the original subscription of this court to the capital stock of said road, provided it should become necessary. It is further ordered by the court, that no money or bonds for any surveys not made in accordance with the former orders of this court, as above mentioned, nor for the purpose of aiding in the further construction of the South Branch of said , in any form or shape whatever, provided work is stopped on the Auxvasse, as directed by the board of directors, on the 2d day of June, 1870. It is also further ordered, that the board of directors be requested to urge forward the work in this country, as contemplated by the order of this court, May, 1870, and that the construction of the bridge at Firebaugh's Crossing be pus'ed ahead with all possible rapidity. And it is also ordered that the county clerk be, and he is hereby, instructed to send a copy of this order to the president and board of directors immediately, and that the local engineer be also notified of the action of this court."

And in the county court in and for the county aforesaid, on the 5th day of November, 1870, the following order was made, to wit:

103 "The estimates of work done on the South Branch of the Louisiana and Missouri River Railroad for the month of October having been filed by the engineer of said railroad, attested as required by law and the order of this court, made on the day of January, 1868, which estimates amount to the sum of 25,600 $\frac{57}{100}$ dollars, and the same having been examined by the court and found correct, it is ordered that the clerk pay to the treasurer of said railroad company said sum of 25,600.57, as near as can be, taking proper receipt for the same."

And in the county court in and for the county aforesaid, on the 5th day of December, 1870, the following order was made, to wit:

"The estimates for work done on the South Branch of the Louisiana and Missouri River Railroad for the month of November, 1870, was on this day filed, and upon examination found to be 30,857 $\frac{0}{100}$ dollars, all properly certified and approved. It is ordered that the clerk pay over to the treasurer of said railroad company bonds sufficient to meet said estimates, as near as can be, the interest due on said bonds since July, 1870, to December 1st to be counted and charged in said payment."

104 And in the county court in and for the county aforesaid, on the 7th day of December, 1870, the following order was m. [illegible], to wit:

'It is hereby ordered by the court that W. H. Bailey be, & he is hereby, appointed a commissioner and agent of the county of Callaway to take stock in and subscribe to the capital stock of the Louisiana and Missouri River Railroad Company the sum of seventy-five thousand dollars, being seven hundred and fifty shares of one hundred dollars each of said capital stock, said subscription to be paid by the issue of county bonds, which said bonds, as hereby ordered, shall issue in sums and payable at such date as the court may direct, to run not exceeding twenty years from the issue thereof, bearing not less than nine per cent. interest per annum, the interest to be paid semi-annually; said sum so sub-

scribed, and to be issued to said company in Callaway County bonds as aforesaid, as may be required by said railroad company, during the progress of the grading, bridging, and tieing of said road; and it is further ordered and understood that the terms upon which this subscription is made are that the funds shall be used exclusively in the grading, bridging, and tieing that part of said railroad lying and being in
105 Callaway County; and as said work progresses the payment therefor shall be made by the payment of bonds prepared by the order of this court upon the estimates made and certified by the chief engineer in charge of the work, and filed in the office of the clerk of this court, as heretofore done; and it is further ordered that the agent appointed to take said stock for Callaway County proceed at once to have the bonds of the county prepared to meet the payment heretofore indicated in this order, to wit, one hundred bonds of the denomination of one hundred dollars; thirty bonds of the denomination of five hundred dollars, to bear date of January 1st, 1871, interest at nine per cent. per annum, and to be due January 1st, 1883, and interest thereon to be paid semi-annually; and fifty bonds of the denomination of one thousand dollars each, dated January 1st, 1871, interest at nine per cent. per annum, and to be due January 1st, 1884, interest payable semi-annually; all of said bonds in every other respect to be like and similar to the bonds heretofore ordered to meet the payments for work done on the south branch of the L. & Mo. River Railroad.

"To the making of which order Judge Hokins enters his protest."

106 And in the county court in and for the county aforesaid, on the 18th day of January, 1871, the following order was made, to wit:

"William H. Bailey, late clerk of the county court of Callaway County, this day made settlement with the county court on account of the railroad funds paid him by the collector of Callaway County, by order of this court, to pay railroad bonds falling due January 1st, 1871, and the interest thereon; also for the payment of interest on other railroad bonds due January 1st, 1871, which settlement was examined, approved, and filed for record. Balance due railroad fund, $440\frac{50}{100}$ dollars, which amount the said Bailey is ordered to pay to the county treasurer on account of the county railroad fund; whereupon said Bailey produced to the court the county treasurer's receipt for $440\frac{50}{100}$ dollars, and the account balanced."

In the county court in and for the county aforesaid, on the 20th May, 1871, the following order was made, to wit:

"It is ordered by the court that the account rendered to this court by the Louisiana and Mo. River Railroad Company for Callaway County's part of the general expenses of said railroad company up to
107 March 1st, 1871, amounting to the sum of $13{,}102\frac{13}{100}$ dollars, be paid in Callaway County railroad bonds, after deducting the sum of $2{,}709\frac{40}{100}$ dollars heretofore paid by a credit allowed said county for interest received by said company, leaving balance to be paid said company, after deducting the amount heretofore received, $10{,}392\frac{73}{100}$ dollars."

And in the county court in and for the county aforesaid, on the 20th day of May, 1871, the following order was made, to wit:

"It is ordered by the court that a tax of one and one-fourth of one per cent. be and is hereby levied on all property taxable by law for the State purposes, *be, and the same is hereby, levied*, to pay the railroad

bonds of Callaway County which fall due January 1st, 1872, and for the payment of the interest due on all outstanding bonds of said Callaway County, issued for railroad purposes, which fall due in January and July, 1871; and it is further ordered that the clerk extend said tax on the tax-book."

And in the county court in and for the county aforesaid, on the 20th day of June, 1871, the following order was made, to wit:

"It is ordered by the court that J. Rickenbaugh, clerk of this
108 court, be, and he is hereby, authorized to borrow for and in the name of the county the sum of 7,500.00 dollars for the purpose of paying the interest on the county railroad bonds falling due on July 1st, 1871, and that the county treasurer pay to said Rickenbaugh, clerk, the amount of railroad funds in his hands to be applied to the same purpose."

And in the county court in and for the county aforesaid, on the 20th day of June, 1871, the following order was made, to wit:

"It is ordered by the court that James Rickenbaugh be, and he is hereby, appointed a commissioner and agent of the county of Callaway to take stock in and subscribe to the capital stock of the Louisiana and Missouri River Railroad Company the sum of twenty-eight thousand dollars, (28,000.00$,) being two hundred and eighty shares of one hundred dollars each of said capital stock, said subscription to be paid by the issue of county bonds, which said bonds, as hereby ordered, shall issue in such sums and be payable at such dates as this court may direct, to run not exceeding twenty years from the issue thereof, bearing not less than nine per cent. interest per annum, the interest to be paid
semi-annually; said sum so subscribed, and to be issued to said
109 company in Callaway county bonds as aforesaid, as may be required by said railroad company, during the progress of the grading, bridging, and tieing of said road; and it is further ordered and understood that the terms upon which this subscription is made are that the funds shall be used exclusively in the grading, bridging, and tieing of that part of said railroad lying and being in Callaway County; and as said work progresses the payment therefor shall be made by payment of bonds of the county of Callaway, prepared by the order of this court upon the estimates made out and certified by the chief engineer in charge of the work, and filed in the office of the clerk of the county court of said Callaway County, as heretofore done; and it is further ordered that the agent appointed to take and subscribe said stock for Callaway County proceed at once to have the bonds of the county prepared to meet the payments heretofore indicated in this order, to wit, twenty-eight bonds of one thousand dollars each, to bear date of July 1st, 1871, interest at nine per cent. per annum, and to be due January 1, 1885,
and the interest thereon to be paid semi-annually; said bonds in
110 every other respect to be like and similar to the bonds heretofore ordered to meet the payments for work done on the south branch of the Louisiana and Missouri River Railroad.

"To the making of the foregoing order Geo. B. Hopkins, one of the justices of this court, enters his protest; Judge Dunn not voting, being absent from the bench."

And in the county court in and for the county aforesaid, on the 5th day of August, 1871, the following order was made, to wit:

"It is ordered by the court that James Rickenbaugh, clerk, be, and

he is hereby, appointed commissioner and agent of the county of Callaway to take stock in and subscribe to the capital stock of the Louisiana and Missouri River Railroad Company the additional sum of thirty-seven thousand dollars, being three hundred and seventy shares of one hundred dollars each of said capital stock, (or so much thereof as may be necessary to complete the road-bed of that part of the south branch of said railroad lying within Callaway County, and all of said sum not actually necessary for the purpose aforesaid is expressly reserved,) said subscription to be paid by the issue of Callaway County bonds, which said bonds, as hereby ordered, shall issue in such sums and be
111 payable at such dates as this court may direct, to run not exceeding twenty years from the issue thereof, bearing not less than nine per cent. interest per annum, this interest to be paid semi-annually; said sum so subscribed and to be issued to said company in Callaway County bonds as aforesaid, as may be required by said railroad company, during the process of grading, bridging, and tieing of said road; and it is further ordered and understood that the terms upon which this subscription is made are that the funds shall be used exclusively in the grading, bridging, and tieing of that part of said railroad lying and being within the limits of Callaway County; and as said work progresses the payment therefor shall be made by the payment of bonds of the county of Callaway, prepared by the order of this court upon the estimates made and certified by the chief engineer in charge of the work on said road, and filed in the office of the clerk of the county court of said Callaway County, as heretofore done; and it is further ordered that the agent appointed as aforesaid to take and subscribe said stock for Callaway County proceed at once to have the bonds of the county prepared to meet the payments heretofore indicated in this order,
112 to wit, thirty-seven bonds of one thousand dollars each, to bear date of July 1, 1871, interest at nine per cent. per annum, and to be due January 1, 1886, and the interest thereon to be paid semi-annually; said bonds in every other respect to be like and similar to the bonds heretofore ordered to meet the payments for work done on the south branch of the Louisiana and Missouri River Railroad."

In the county court in and for the county aforesaid, on the 21st day of December, 1871, the following proceedings were had, to wit:

The court examined, counted, and cancelled the coupons from Callaway County railroad bonds, due and taken in July 1, 1871, as follows, to wit:

321 coupons for $45.00 each	14,400 00
8 coupons for $22.50 each	180 00
375 coupons for $4.40 "	1,687 50
	$16,267 50

The court examined, counted, and cancelled Callaway County railroad bonds, dated January 1st, 1869, due January 1st, 1881, and numbered from one to 123 inclusive, of 100 dollars each, together with the last coupon on each bond.

123 bonds, No. 1 to 123 inclusive, $100 ea	$12,300 00
123 coupons for 4\frac{50}{100}$ each	553 50
	$12,853 50

113 The court examined, counted, and cancelled Callaway County railroad bonds, dated January 1, 1869, and due January 1st, 1874, numbered from 6 to 85 inclusive, for 100 dollars each, together with seven coupons on each bond.

80 bonds, No. 6 to 85 inclusive, for $100 each	$8,000 00
560 coupons for $4.50 each	2,520 00
	$10,520 00

And in the county court in and for the county aforesaid, on the 19th day of January, 1872, the following proceedings were had, to wit:

M. T. Meredith, collector of Callaway County, produced to the court Callaway County railroad bonds No. 6, 16, 17, 18, 45, & 67, for 100$ each, date Jan'y 1, 1869, due Jan'y 1, 1872, (paid off and redeemed by said collector,) which bonds were cancelled by the court, and allowed as a credit to said collector on a/c of revenue collected for railroad purposes for the sum of $600.00.

M. T. Moore, collector of Callaway County, produced to the court coupons due Jan'y 1st, 1872, from Callaway County railroad bonds paid off and redeemed by him, which were examined by the court, counted, burned, and allowed as a credit to said collector on account of revenue collected for railroad purposes, as follows, to wit:

	45 coupons for $45.00 each	$1,225 00
	4 coupons for $22.50 "	90 00
114	151 coupons for $4.50 "	679 50
	Total	$1,894 50

And in the county court in and for the county aforesaid, on the 23d day of February, 1872, the following proceedings were had, to wit:

Jas. Rickenbaugh, clerk, presented for settlement his accounts for money borrowed by order of this court, and placed in his hands for the purpose of paying off and taking in Callaway County railroad bonds and coupons falling due January 1, 1872:

To amount of note given to Callaway County Savings Bank, dated Dec'r 23, 1871	$20,025 00
To amount note given to Callaway Savings Bank, dated Dec'r 30, 1871	8,000 00
Total amount received	$28,025 00

CR.

By amt. receipt of Geo. M. Edgarton for money sent Barthow, Lewis & Co., receipt herewith filed	$20,000 00	
By amt. sent to Bartholow, Lewis & Co., per U. S. express, receipt herewith filed	8,000 00	
By amt. paid Callaway Co. Savings Bank for exchange	25 00	
		$28,025 00

J. RICKENBAUGH, *Clerk.*

Approved.

THOS. B. NESBET.
WM. F. DUNN.
GEO. B. HOPKINS.

115 Which above account was examined by the court, approved, signed, and ordered to be filed for record.

In the county court in and for the county aforesaid, on the 25th day of May, 1872, the following proceedings were had, to wit:

"It is ordered by the court that E. Curd, county treasurer, be, and he is hereby, directed to pay to Messrs. Bartholow, Lewis & Co., St. Louis, the sum of $1,216.92 *dollars*, out the county railroad fund in his hands, the said sum being the balance due said Bartholow, Lewis & Co., for money paid out by them in redeeming Callaway County railroad bonds and coupons falling due January 1, 1872."

And in the county court in and for the county aforesaid, on the 27th day of June, 1872, the following order was made, to wit:

It is ordered by the court that a tax of one and one quarter of one per cent. (1¼) be levied upon all property and license made taxable by law for State purposes, and collected for the purpose of paying interest and principal of Callaway County for railroad purposes falling due.

116 And in the county court in and for the county aforesaid, on the 28 day of June, 1872, the following proceedings were had, to wit:

The court this day examined, counted, and burned coupons from Callaway County railroad bonds falling due and paid off Jan'y 1, 1872, as follows, to wit:

431 coupons for $45.00 each, amtg. to				$19,395 00
40 coupons for $22.50	"	"	"	900 00
407 coupons for $4.50	"	"	"	1,831 50
				$22,126 50

And in the county court in and for the county aforesaid, on the 27 day of June, 1872, the following order was made, to wit:

"It is ordered by the court that James Rickenbaugh be, and he is hereby, directed to borrow for and in the name of this county the sum of twelve thousand dollars, for the purpose of paying the coupons on Callaway County railroad bonds falling due July 1st, 1872; and it is further ordered that a warrant be drawn on the railroad fund in the county treasury in favor of the said Rickenbaugh, for the sum of eleven thousand dollars, and that he pay over said sums thus borrowed and drawn to Bartholow, Lewis & Co., St. Louis, to be by them applied to the payment of the coupons as aforesai."

117 And in the county court in and for the county aforesaid, on the 24th day of August, 1872, the following order was made, to wit:

"It is ordered by the court that the tax levy made by this court on the 27th day of June, 1872, for railroad purposes for the year 1872, be, and the same is hereby, revoked and annulled, and the collector of this county be not required to receipt for the same."

I, James Rickenbaugh, clerk of the county court in and for the county of Callaway and State of Missouri, do hereby certify that the above and foregoing are true, perfect, and correct copies of the original orders made by the county court of Callaway County, as fully as the same appears of record in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of said county court this 26th day of April, A. D. 1873.

[SEAL.] JAMES RICKENBAUGH, *Clk.*

8th. That the map filed in this cause, and certified up with the record herein, shows the true location, direction, beginning, and termi-

118 nus of the Louisiana and Missouri River Railroad, on the line both to Glasgow and through Callaway County.

From the foregoing facts thus specifically found the court finds as a conclusion of law that the plaintiff is entitled to recover, and renders judgment accordingly, in the words and figures following, to wit:

THOMAS J. FOSTER
vs.
CALLAWAY COUNTY. } No. 129.

Now come the parties, by their respective attorneys, the plaintiff by Stevenson, Ewing & Smith, and the defendant by Lay & Beach; and this cause having heretofore been submitted to the court, and the premises being seen and fully understood, the court doth find the issues for the plaintiff, and assesses his damages at the sum of forty-three hundred and sixty dollars and nineteen cents.

It is therefore considered, ordered, and adjudged by the court that the plaintiff have and recover against the said defendant as well the said sum of forty-three hundred and sixty dollars and nineteen cents as also his costs herein laid out and expended, and have thereof execution.

119 MEMORANDUM.—$\$782\frac{77}{100}$ of this judgment bears 9 per cent. interest per annum, and $\$3{,}577\frac{42}{100}$ bears 6 per cent. interest per annum.

To which said finding, conclusions of law, and judgment the said defendant then and there excepted; and the presiding judge of said court now here signs the foregoing special finding of facts and law and the defendant's said exceptions, and makes the same part of the record.

JOHN F. DILLON,
Circuit Judge.

The court filed in the cause the following opinion, to wit:

United States circuit court, western district of Missouri, April term, 1874.

THOMAS J. FOSTER
vs.
CALLAWAY COUNTY.

1. The power conferred upon counties along the route of the Louisiana and Missouri River Railroad Company, by the charter of that company of March 10, 1859, to subscribe for its stock without a vote of the people, was not taken away as respects Callaway County by the amendatory act of March 24, 1868.

120 2. The provisions of the State constitution, as to aid to railways, amendatory acts, and titles discussed.

Before DILLON and KREKEL, *J. J.*:

MUNICIPAL SUBSCRIPTIONS.—RAILWAY-AID BONDS, SPECIAL CHARTER, ETC.

This is an action upon coupons attached to bonds issued by the defendant to the Louisiana and Missouri River R. R. Co. or bearer, dated January 1, 1869.

The answer denies the authority of the county court of Callaway County to issue the bonds, and this denial rests upon the grounds mentioned in the opinion of the court. The cause was submitted to the court upon the pleadings an' agreed statement of facts and the record of the county court of Callaway County in relation to the issue of the bonds. The plaintiff is admitted to be the owner of the bonds for value.

The defendant insists that the bonds were issued to the south branch of the Louisiana and Missouri River R. R. Co., under the act of the 24th of March, 1868, and not under the act of March 10, 1859, both of which are referred to in the opinion of the court; and the defendant
121 further insists, as there was no vote of the people as required by the constitution of 1865, and as no part of what is claimed to be the "main line" of the road is within the county of Callaway, that the bonds were issued without authority of law, and are void.

It is admitted that the county has paid interest on the bonds for 1870 and 1871, and has also paid a small part of the principal.

It is also admitted that no vote of the people of the county was had authorizing the subscriptions by the county court.

The bonds are made payable to the Louisiana and Missouri River R. R. Co. or bearer, and contained the following recital: "This bond is issued by Callaway County, by authority of an act of the general assembly of the State of Missouri, approved March 10th, 1859, as amended by an act approved March 24, 1868."

The other facts appear in the opinion.

J. D. Stevenson, and Ewing & Smith, for plaintiff. O. Guitar, T. C. Reynolds, Lay & Beach, Jeff. Jones, Boulware & Flood, for defendant.

PER CURIAM, (Dillon and Krekel, J. J., concurring:)

On the 10th day of March, 1859, the general assembly of the State of Missouri passed an act authorizing the organization of a railroad
122 company, under the name of the Louisiana and Missouri River R. R. Co., with a capital stock of three millions of dollars, and granting it power to "mark out, locate, and construct a railroad from the city of Louisiana, in the county of Pike, by the way of Bowling Green, in said county, to some suitable point on the North Missouri Railroad, intersecting said road between the southern limits of the town of Wellsville, in Montgomery County, and the northern limits of the town of Mexico, in Audrain County; thence to the Missouri River at the most eligible point on the line, the most suitable and advantageous, as regards distance, grade, cost of road, and permanent value of the same."

In this act of incorporation power was given "the county court of any county in which any part of the route of said railroad may be to subscribe to the stock of said company, and to invest its funds in the stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interests and credit of the county."

No popular vote was required as a condition to the exercise of this power by the county courts.

Before any subscription by Callaway County was made to the
123 stock of the company, a number of the surveys of the route of the road had, according to the agreed statement of facts, been made, some of them running through Callaway County, and others through Boone and Howard, and not touching any part of Callaway County. On the 16th day of January, 1868, the county court of Callaway County appointed Thomas B. Harris "commissioner and agent of the county of Callaway to take stock in and to subscribe to the capital stock of

the Louisiana and Missouri River Railroad Company the sum of five hundred thousand dollars, being 5,000 shares of one hundred dollars each of said capital stock, said subscription to be paid by the issue of county bonds, * * * * * as may be required by said company, during the progress of the construction of said railroad, from some point west or southwest of the North Missouri Railroad, on either the Wellsville or Jefftown routes, as surveyed through said county, through the city of Fulton, (in said county,) and by way of New Bloomfield, (in said county,) as near as practicable to the Missouri River." This subscription of $500,000 by the commissioner thus appointed by the county was made by him on the books of the company on the same day,
(January 16th, 1868,) as appears by a recital on the records of the
124 county. Three smaller subscriptions were afterwards made by
the county court to the stock of the Louisiana and Missouri River R. R. Co. The Louisiana and Missouri River Railroad Company, it is agreed, subsequently to the said 16th day of January, 1868, "located and built the road now operated, running from Louisiana, in Pike County, to Mexico, in Audrain County, and located and graded, and partially completed the road running from Mexico to Glasgow, (in Howard County,) on the Missouri River, and completed the road now running and operated from Mexico, in Audrain County, by way of Fulton, in Callaway County, through Callaway County to a point therein on the Missouri River opposite Jefferson City."

The constitution of the State of Missouri, in force at the time of the passage of the act of incorporation of the Louisiana and Missouri River Railroad, on the 10th day of March, 1859, contained no provision restraining the legislature from authorizing subscriptions to railroads in any manner it saw fit; but the present constitution, which went into effect on the 4th day of July, 1865, contains this provision: "The general assembly shall not authorize any county, city, or town to become
a stockholder in or to loan its credit to any company, associa-
125 tion, or corporation, unless two-thirds of the qualified voters of
such county, city, or town, at a regular or special election to be held therein, shall assest thereto."

In reference to laws in force at the time of the going into effect of the present constitution of the State, it has this provision: "All statute laws of the State now in force, not inconsistent with the constitution, shall continue in force until they shall expire by their own limitations or be amended or repealed by the general assembly."

In reference to the subject and title of laws, the present constitution has this provision: "No law enacted by the general assembly shall relate to more than one subject, and that shall be expressed in the title; but if any subject embraced in an act be not expressed in the title, such act shall be void only as to so much thereof as is not expressed."

A further provision of the constitution is: "No act shall be revised or re-enacted by mere reference to the title thereof, nor shall any act be amended by providing that designated words thereof shall be struck out and others in lieu thereof; but in every such case the act revised
or re-enacted, or the act or part of act amended, shall be set forth
126 and published at length, as if it were an original act."

With these constitutional provisions in force, the legislature, on the 24th day of March, 1868, (Laws of 1868, p. 97,) which was after the subscription of $500,000 by the defendant, underoook to amend the original act of incorporation of the Louisiana and Missouri River R. R. Co., by increasing its capital stock, fixing the terminus of the road, authorizing the location and construction of a branch road, and grant-

ing power to carry into effect the provisions of the act. It may be proper, although not strictly necessary, to notice here one question discussed by counsel and by the State supreme court in the Saline County case, (State vs. Saline County Court, 51 Mo.,) as to whether the act of March 24, 1868, is an amendatory act; and as to this point it seems to us only necessary to state that the amendment of 1868, aside from the title, repeats nearly the whole of the original charter verbatim, embodying in it new provisions only, thus literally complying with the constitutional provision cited requiring an amendment to be "set forth and published at length, as if it were an original act."

Looking thus at the amendatory act, it cannot, we think, be held that the legislature undertook thereby to create by special act a
127 new corporation, which, under the constitution, (art. 8, sec. 4,) it was prohibited from doing.

As to the constitutional provision requiring that an act shall not relate to more than one subject, and that expressed in its title, our opinion is that the mischief sought to be provided against was the passing of acts having no title at all, a false title, or mixing up matters incongruous and having no relation to each other. The whole of the amendatory act embraces but one subject when viewed with reference to the matter in hand, viz, the building of a railroad; and this is sufficiently expressed in the title. With the question of the validity of the amendatory act, so far as it relates to counties south of the Missouri River, we have no concern and pass no opinion, having to deal here with Callaway County, on the north side of the river, and in which a part of the Louisiana and Missouri River might, by the original charter of March 10, 1859, be located and built.

The question as to whether the legislature, in 1868, had authority to amend the charter of 1859 would seem to be settled by the constitutional provision above cited in respect to amending statute laws as expounded by the supreme court of Missouri, in the case of the
128 Cape Girardeau and State Line Railroad Company, (48 Mo., 486,) and the late case of the State ex rel. vs. Greene County. But we do not mean to be understood as holding that the power of amendment of charters exists to the extent of conferring, by way of amendment, powers prohibited by express provisions of the constitution of 1865.

Callaway County is undoubtedly on the line of the railroad as contemplated in the original charter, and hence the county court had the right to subscribe, provided any part of the road was in it. At the time of the county's subscribing the $500,000 stock under the original charter, and prior to its amendment, some of the lines of the route of the railroad had in fact been run through Callaway County, as admitted by the agreed statement of facts.

The order of subscription speaks of paying out the bonds as the work of construction progresses through the county.

The supreme court of Missouri has so repeatedly decided, under provisions such as those contained in the charter of the Louisiana and Missouri River Railroad, that the county courts had the right, unaffected by the constitution of 1865, to subscribe without submitting the question to the people, that it is not necessary to dwell upon the
129 point or do more than refer to the late case of Smith and Hall vs. Clark County, in which the former decisions are cited and affirmed, and to the still more recent case of the State ex rel., &c., vs. Green County. Another question discussed by counsel relates to the effect of the recital in the bonds, which were made payable to the

Louisiana and Missouri River Railroad Company or bearer; that the same were issued in conformity to the act of the 10th day of March, 1859, and the amendatory act of March 24, 1868. Under our view the amendatory act did not create a new corporation, and we are inclined to think that it did not take away the power of the county court to subscribe for the stock, as conferred in the original charter of the company, and that it should not be held to do so as respects the bona-fide holder of bonds which purported on their face to be issued under the authority of the charter.

And this view finds a very strong support in the decisions of the supreme court of the State, affirming the power of the counties along both the main line and branches to subscribe for the stock under the provisions of charters antedating the present constitution, in the Macon, Sullivan, and Greene County cases.

As to the amendatory act, calling the road running through Callaway County the "South Branch," after the main subscription had
130 been made to the Louisiana and Missouri River Railroad to aid in building a road surveyed and afterwards built through Callaway County, this cannot effect the bona-fide holder of the bonds.

From the evidence, and the original charter of 1859, it would appear as though the road, as now built through Callaway County, was the main line, or at least as much the main line as the line further west, which does not touch Callaway County. The limitation in the charter of 1859 of the capital stock to three millions, scarcely sufficient to build a road of a hundred miles, the direction of the road from Louisiana, by way of Bowling Green, crossing the North Missouri Railroad west of Wellsville, and east of Mexico, thus narrowing down, as it were, the objective points, all indicate that the nearest place on the Missouri River was in the minds of the originators of the road as well as of the legislature when it passed the charter.

We have adverted to the nature and effect of the amendatory act, because these subjects have been largely discussed by cou'sel, and not because they are absolutely necessary to reach a conclusion in the present case.

We place our judgment on this ground. The plaintiff is a bona-fide holder of the bonds issued by the county. These bonds recite
131 that they are issued by virtue of the power conferred upon the county by the original charter of the company of March 10, 1859, as amended by the act of March 24, 1868. The act of March 10th, thus recited, did give the power, and that power is not taken away by the amendatory act of 1868, but, according to the decisions of the supreme court of the State above mentioned, remains unaffected by the provisions of the constitution of 1865, requiring a popular sanction to such subscriptions. All of the subscriptions were made to the Louisiana and Missouri River Railroad Company, the original corporation, and not to the branch mentioned in the amendatory act.

As there was legislative power in the county to make the subscription and to issue the bonds, and as the county court had exercised this power and issued the bonds, which have found their way into the hands of the plaintiff, a bona-fide holder for value, the decisions of the Supreme Court of the United States conclude the county from making the defence here attempted, and this whether the amendatory act be or be not void, and whether the county was or was not authorized to transfer the subscription to what is called the South Branch, or to apply the money raised by the sale of the bonds to the building of that branch.

132 It may further be remarked that the record of the county court shows that the proceeds of the bonds issued by the county were applied to the building of a road substantially along the line to which the subscription was made on the 16th day of January, 1868; that the work progressed slowly, and the bonds were issued from time to time; that the minor changes in the line of the road were assented to by the county court; that the road passes through the entire body of the county, and is in full operation, and that the two years' interest and part of the principal have been paid. Under these circumstances it seems to us that no one familiar with the decisions of the Supreme Court of the United States upon the general question, and of the supreme court of Missouri to the effect that the power of the county court to subscribe without a vote of the people survived, unaffected by the constitution of 1865, can reasonable anticipate but one result.

The case, in the aspect in which it is viewed by the defendant's counsel, presents some new questions, and it is certainly one of great moment to the county, as it involves in its consequences a liability of over a half million of dollars.

We are relieved of much of the weight of responsibility we would feel by the consideration that our judgment is not final, and
133 that the record can so easily be put in a shape to present the merits of the case for the decision of the Supreme Court of the United States.

In our opinion the plaintiff is entitled to judgment.

Judgment accordingly.

And afterwards, to wit, on the 27th day of May, 1874, in vacation of said court, the defendant filed the following bond, to wit:

Bond.

Circuit court of the United States for the western district of Missouri.

THOMAS J. FOSTER
against
THE COUNTY OF CALLAWAY.

Know all men by these presents, that we, the county of Callaway, in the State of Missouri, by William H. Wilkerson, presiding justice of the county court of said county, and John P. McCall, J. T. Gregory, John B. Gregory, John T. Sayers, Wm. T. Dunn, and J. F. Jones, of Callaway County, Missouri, are held and firmly bound unto Thomas J. Foster, of the county of Marion, in the State of Kentucky, in the sum of ten thousand dollars, to be paid to said Thomas J. Foster, his executors or administrators, to which payment, well and truly to be made, we
134 bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 21st day of May, A. D. 1874.

Whereas the above-named county of Callaway hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment in the case of Thomas J. Foster against the county of Callaway aforesaid, by the circuit court of the United States for the western district of Missouri: Now, therefore, the condition of this obligation is such that if the above-named county of Callaway shall prosecute its said writ of error to effect, and answer all costs and damages if it shall

fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

COUNTY OF CALLAWAY,
By W. H. WILKERSON, [SEAL.]
Presiding Justice of the County Court and Agent for said County.

[CO. SEAL.] Attest:
JAS. RICHENBAUGH,
Clerk of the County Court County, with the seal of said court affixed, this May 21, 1874.

JOHN P. McCALL. [SEAL.]
J. T. GREGORY. [SEAL.]
JOHN B. GREGORY. [SEAL.]
JOHN T. SAWYERS. [SEAL.]
WM. F. DUNN. [SEAL.]
135 J. F. JONES. [SEAL.]
By W. H. WILKERSON,
A member of the County Court.

Signed, sealed, and delivered in the presence of—
ELISHA V. DYSON,
One of the Justices Callaway County Court.

Attached to said bond is the following, to wit:

MAY 20, 1874.

I hereby authorize any member of the county court of Callaway County, Mo., to sign my name as security for the county in the appeal of the case of Foster vs. said County, in the western district of Mo.

J. T. JONES.

Approved. A. KREKLE, *Judge.*

UNITED STATS OF AMERICA,
Western District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for said district, hereby certify that the above and foregoing is a true, full, and complete copy of the record and proceedings had, and the opinion of the court, in the above-entitled cause, as fully as the same appears in my said office.

136 I further certify that the map hereto attached is the identical map referred to in the eighth special finding of the court.

In witness whereof I have hereto signed my name and affixed the seal of said circuit court, at office in the city of Jefferson, this first day of June, A. D. 1874.

[SEAL.]
M. M. PRICE, *Clerk.*
By C. M. WARD, *Deputy.*

(Here follows map, marked page 336.)

(Indorsement on cover:) No. 266. The County of Callaway, in the State of Missouri, plaintiff in error, vs. Thomas J. Foster. W. Missouri C. C. U. S. Filed 26th September, 1874.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

Supreme Court

OF THE UNITED STATES.

THE COUNTY OF CALLAWAY,
Plff. in Error.

vs.

THOMAS J. FOSTER,
Deft. in Error.

No. 70.

STATEMENT.

Thomas J. Foster brought this action in the Circuit Court of the United States for the Western District of Missouri, against the county of Callaway in that State, upon certain bonds of the said county, and certain coupons of other bonds of said county, and had judgment thereon for the amount of said securities in the sum of $4,360.19.

The cause was tried before Judge Dillon, without

a jury, and the court found the facts specially, and the conclusion of law thereon that the plaintiff was entitled to recover.

Rec., fols. 75–119.

The sole question involved in the controversy touches the *validity* of these bonds of Callaway County, which form part of an issue made by the county of $500,000—of bonds to pay for a subscription made by the county to stock of the Louisiana & Missouri River R. R. Co. This question turns upon the operation and effect of certain clauses of the Constitution of Missouri, which went into effect July 4, 1865, upon the Statutes of that State, under which the bonds are claimed to have been authorized and to be valid.

An act passed March 10, 1859, incorporated the Louisiana & Missouri River R. R. Co., with power "to mark out, locate and construct a railroad from the city of Louisiana, in the county of Pike, by the way of Bowling Green, in said county, to some suitable point on the North Missouri Railroad, intersecting said road between the southern limits of the town of Wellsburg, in Montgomery county, and the northern limits of the town of Mexico in Audrain county, thence to the Missouri river at the most eligible point, on a line the most suitable and advantageous as regards distance, grade, cost of road, and permanent value of same."

Laws Mo., 1859, p. 407, § 35.

The act provides that "it shall be lawful for the county court *of any county in which any part of the route of said railroad may be*, to subscribe to the stock of said company, and it may invest its funds in stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interest and credit of the county."

Ib., p. 406, § 29.

The new constitution of the State of Missouri contains the following provisions bearing upon this controversy :

4 July 1865

ART. 4, § 25. "No act shall be revised or re-enacted by mere reference to the title thereof, nor shall any act be amended by providing that designated words thereof shall be struck out and others inserted in lieu thereof; but in every such case, the act revised or re-enacted, or the act or part of act amended, shall be set forth and published at length, as if it were an original act."

ART. 4, § 32. "No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title; but if any subject embraced in an act be not expressed in the title, such act shall be void only as to so much thereof as is not expressed."

ART. 8, § 4. Prohibits the creation of a corporation by special act.

ART. 11, § 3. "All statute laws now in force, not inconsistent with the Constitution, shall continue in force until they shall expire by their own limitations or be amended or repealed by the General Assembly."

ART. 11, § 14. "The General Assembly shall not authorize any county, city or town to become a stockholder in, or to loan its credit to, any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto."

On the 24th March, 1868, an act was passed with this title :

"An Act to amend an act entitled: 'An act to incorporate the Louisiana & Missouri River R. R. Co.,' by

increasing the amount of the capital stock of said company, defining more explicitly the power of the Board of Directors to fix the *western* terminus of said road, *authorizing the location and construction of a branch road*, and conferring upon said board the necessary powers to carry into effect the several objects contemplated by *this charter*, and also by striking out sections eleven, eighteen, twenty-seven, thirty and thirty-one of said Act."

This Act, in its text, makes no reference whatever to the Act of 1859; it speaks throughout as a present originating source of authority, not grafted upon any previous legislation, or applied to any existing corporation or railroad plan or structure; but for its *title* there would be no suggestion or surmise of such previous legislation.

Section one proceeds: "A company is *hereby* incorporated, called 'The Louisiana & Missouri River Railroad Company,' the capital stock of which shall be ten millions of dollars," &c.

Section 18 proceeds: "The company *hereby incorporated* shall commence the construction of the said road within ten years *after the passage of this Act*, and shall complete the same within twenty years thereafter, "&c.

SECTION 20. "It shall be lawful for the County Court of any county in which any part of the line of said railroad may be located to subscribe to the stock of said company, and issue the bonds of the county to raise funds to pay the stock thus subscribed, said bonds to bear interest not exceeding ten per cent., payable semi-annually, and to take proper steps to protect the interest and credit of the county."

SECTION 21. "The said company shall have power to mark out, locate and construct a railroad from the city of Louisiana, in Pike county, by the way of or near the town of Bowling Green in said county, and thence to such point on either the north or south bank of the

Missouri river, as may be selected by the Board of Directors; the said road to be located between the points thus indicated, on a line the most suitable and advantageous as regards distance, grade, cost of road, and permanent value of the same. This act shall be so construed as to authorize the location of the line of said road across the Missouri river at any point that may seem most suitable for that purpose, and that may best subserve the interest of the company."

SECTION 22. "It shall be lawful for the said company to mark out, locate and construct a *branch* of its said road, commencing at a point on the line thereof, to be selected by the Board, not further east than the town of Bowling Green, in Pike county, and running thence by the most practicable and advantageous route to any point on the Missouri river between the town of St. Aubert, in Osage county, and the city of Boonville in Cooper county. Said branch road shall be known and designated as the "*South Branch of the Louisiana and Missouri River Railroad*," *and all subscriptions to the capital stock of said company intended to be used in the construction of said branch shall be made in separate books, opened under the direction of the Board at such places as may be selected for that purpose. Such subscriptions shall specifically designate the objects for which they are made, and no part of the funds paid thereon shall be used in the construction of the main line of said road, but shall be faithfully applied to the building of said branch.*"

SECTION 23. "All of the powers and privileges herein conferred upon the Board of Directors in connection with the main line of said road, shall likewise be exercised and enjoyed fully in the construction of the branch road herein provided for, and the same shall be constructed, operated and managed in all respects in the same manner.

Laws 1868, pp. 97–104.

It will be observed that this Act of 1868, on its face,

creates a new corporation and confers the whole body of its franchises as dating from, and resting upon, *this* charter.

If its "*title*" is allowed any operation, *as an enactment*, then it will be observed, by comparing this Act of 1868 with the Act of 1859, that a corporation, with new capital, new powers, new main line, a branch with a separate stock, now first created, and a modified power of county subscription, comes into existence by force of the Act of 1868.

All the proceedings of the County Court of Callaway county are spread out in the findings of the court below.

Rec., fols. 79–117.

Prior to January 16, 1868, the La. & Mo. R. R. R. Co. had *surveyed* several lines of road, some of which passed through Callaway county, and some of which passed through Boone and Howard counties without touching Callaway county. No line passing through Callaway county had been adopted or commenced.

Findings, fol. 77.

On this 16th January, 1868, the Callaway County Court appointed a commissioner and agent, with authority to subscribe to the stock of the La. & Mo. R. R. R. Co. to the amount of $500,000, such subscription to be made *upon condition :*

1. "Said sum so subscribed and to be issued to said company in Callaway county bonds as aforesaid, as may be required by said railroad company during the progress of the construction of said railroad from some point west or southwest of the North Missouri R. R. or either the Wellsville or Jefftown routes as surveyed through said county, through the city of Fulton, and by way of New Bloomfield, as near as practicable, to the Missouri river."

2. "And it is further declared that the conditions upon which this subscription is based are that the funds shall be used exclusively in the building and construction of that part of the road lying west or southwest of the North Mo. R. R., on either of the routes aforesaid, *as the same may be adopted and located*, and as said work progresses said appropriation shall be met by the appropriation of bonds, as the construction and building of that part of said road, as may be shown by the reports of said company to this court from time to time, may demand."

Findings, fols. 80–81.

This is all that was done under the Act of 1859, and prior to the Act of March 24, 1868. The *conditions* never were complied with by the company, and no route was "*adopted or located*" through Callaway County, upon which the conditional authority to subscribe, or the statutory permission to subscribe, rested.

After the passage of the Act of March 24, 1868, and on the 17th June, 1868, the County Court passed the following order:

"It is ordered by the court that the order of the board of directors of La. & Mo. R. R. R. Co., in accepting the amended charter of said company and locating the road thereunder, be, and the same is hereby ratified and approved by this court, and the commissioners for Callaway Co. *are hereby authorized and instructed to transfer the stock taken by said commissioners in the capital stock of said company to the branch books of said company* in accordance with the provisions and stipulations thereof, subject, however, to such restrictions and conditions as set forth in the order authorizing the original subscription, and such other conditions and stipulations as may be made hereafter by the board of directors of said company and this court."

Findings, fols. 81–82.

By an order of the County Court, made Oct. 28th, reciting the two preceding orders, and the fact of the transfer of the county subscription "from the books of the La. & Mo. R. R. R. Co. to the books opened for subscriptions to the capital stock of the South Branch of the said La. & Mo. R. R. R. Co.," as having been made, the issue of bonds and placing them in the hands of commissioners, named in the order, is authorized. These bonds are to be delivered to the R. R. Co. as the work on the "South Branch" progresses.

Findings, fols. 83–86.

It appears that the County Court which made the subscription paid the interest for 1870 and 1871, and a small part of the principal, but the County Court since elected has refused to make any further payment, and that in September, 1869, the taxpayers and citizens of the county filed a bill to compel the surrender of the county bonds, which suit was pending when the present action was tried.

Findings, fols. 78–79.

By the findings and by the "*map*" certified by the findings, it appears that the main line passes nearly west from the Mississippi to the Missouri river, and in no part touches the county of Callaway. The south Branch, first authorized by the Act of 1868, diverges from the main line and pursues a course nearly at right angles to it, which carries it through Callaway county.

Findings, fols. 78, 118.

The court finds,

"6. That the taxpayers or qualified voters of Callaway County have never voted upon the making of said subscriptions, or given their assent thereto, and no election for that purpose was ever called or held in said county."

Findings, fol. 79.

The bonds and coupons are set out in the findings. The bonds are dated Jan. 1, 1869, and on their face show they were "issued by Callaway County, by authority of an Act of the General Assembly of the State of Missouri, approved March 10, 1859, *as amended by an act approved March* 24, 1868."

Findings, fols. 76–77.

Apparently no bonds were actually negotiated or paid out until the latter part of the year 1869. When the plaintiff acquired those in suit, does not appear. The court finds, as to his title, simply,

"That the plaintiff is the owner and holder of all the said bonds and coupons sued on, *for value*, and produced the same at the trial."

Findings, fol. 77.

ASSIGNMENT OF ERROR.

The only error was in the conclusion of law upon the facts found, whereby the court below gave judgment for the plaintiff, whereas the court should have given judgment for the defendant.

Rec., fols. 118, 119.

The case comes up by writ of error.

The opinion of the court was given by Judge Dillon, and is contained in the record.

Rec., fols. 120–133.

POINTS.

First Point.—The authority of Callaway county to take stock in a railroad corporation, and in payment therefor to issue bonds binding the county

in whosesoever hands, must be communicated by some valid law of the State of Missouri, or such transaction would be void and the bonds issued without such support invalid.

State *vs.* Saline Co. Court, 45 Mo., 242, 247.

Second Point.—By the Act of 1859 subscriptions were authorized by counties in which any part of the route of the railroad might be, and it has been held by the Supreme Court of Missouri that the restriction of Art. 11, § 14 of the constitution of 1865 (requiring the assent of a two-third vote of the qualified voters of the county), was not retroactive in its operation, so as to retract or qualify the power of the county conferred by previous legislation. This power could be exercised after the new constitution, according to the terms in which it was originally created.

State *vs.* Macon Co. Court, 41 Mo. 453.

State *vs.* Sullivan Co. Court, 51 Mo., p. 522.

Third Point.—It has also been held by the Supreme Court of Missouri that if any extension of route were made by amendment of the Act of 1859, subsequent to the Constitution of 1865, any county through which the extended route lay, that was not on the route designated in the Act of 1859, could not subscribe to the road without conforming to Art. 11, § 14, of the Constitution, by submitting the question to the people.

State *vs.* Saline Co. Court, 51 Mo., 350.

This case arose under the act of 1868, upon the right of Saline county to subscribe to the stock of this very railroad company.

By the act of 1859 the road was authorized *to* the Missouri river, and the court held that this did not authorize *crossing* the river, and that Saline county was not authorized by the Act of 1859 to subscribe to this stock, because no part of the authorized route of the railroad was in Saline county.

By the act of 1868 the railroad was authorized to go to any point on the north or south bank of the Missouri river, and to cross the river. This brought a part of the authorized route of the railroad within Saline county. The county thereupon subscribed for stock, and issued bonds to pay for the same, and the question was whether the permission in the act of 1868 to make such subscription was valid. It was held invalid because the condition of the assent of the qualified voters required by Art. 11, § 14 of the Constitution was not imposed by the statute of 1868.

The court says of the proposition that the subscription was valid, "such a construction would give to them (the counties) powers prohibited by the constitution which they did not possess at the time of its adoption."

The Court held, accordingly, that the authority to Saline county must be found, if at all, in the act of 1868, and, therefore, it was invalid for non-conformity to the constitutional requirement of the assent of the qualified voters of the county.

51 Mo., 351, 373-4.

Fourth Point.—Upon the authority of this case, fully supported as it is by its reason, the question of the validity of the bonds of Callaway county,

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51 Mo., 351, 373–4.

Fourth Point.—Upon the authority of this case, fully supported as it is by its reason, the question of the validity of the bonds of Callaway county,

turns upon the consideration, whether they rest upon the authority of the act of 1859, unaided by the act of 1868.

If they rest upon the act of 1859, they are not subject to Art. 11, § 14, of the Constitution of 1865, and are not invalid, though wanting the assent of the qualified voters of the county.

If the subscription and the bonds find their necessary authority in the Act of 1868, they are void for want of the assent of the qualified voters of the county, required by Art. 11, § 14, of the Constitution.

Fifth Point.—The sole authority for the subscription to the stock of the R. R. Co. by the Callaway County Court, and for the issue of the bonds of the county, is found in the act of 1868, and such subscription was made and the bonds issued by the County Court under the authority of the act of 1868, as is declared on the face of the bonds.

I.—The action of the county court, prior to the passage of the act of 1868 (by which a prospective or conditional issue of county bonds was proposed and an actual issue might have occurred), constitutes no part of the proceedings by which the actual subscription and issue of bonds, after the passage of the act of 1868, took place.

A reference to the order taken by the County Court on the 16th January, 1868, and that taken on the 17th June, 1868 (Rec., fols. 80–82), will show that the inchoate and conditional subscription under the act of 1859 was cancelled, and the subscription was made wholly under the act of 1868.

The instruction to the commissioners "to trans-

fer" the subscription made under the act of 1859 to the subscription which first became possible under the act of 1868, was an instruction to withdraw and annul the first subscription, and to make a new and different subscription. This instruction was carried out. The first subscription was, thereafter, as if it never had been. The new subscription was complete in itself, had no relation to the previous subscription, and was in all respects, in fact and in law, just what it would be had there been no previous inchoate and conditional subscription.

II.—A mere inspection of the act of 1868 will show that the route and project of a "branch road," with its separate stock basis, first find a place in the act of 1868.

When, therefore, the Callaway county court undertook to become a shareholder in this branch road, and issue the county bonds to pay for the same it availed itself of a facility first opened to it by the act of 1868, subscribed to a railroad stock then first created by that act, and yet assumed to issue bonds of the county to pay for the same, as if the prohibition of the Constitution were not in force.

III.—The substantial distinction between a subscription to a main line or entire road, or a section of the same, with divided and apportioned stock bases for the divisions, was fully considered by this court in an important case. An authority to take stock, and issue bonds for stock, in the entire road, was held not to authorize such subscription and issue in respect of a division of the road.

Marsh *vs.* Fulton Co., 10 Wall., 676.

Tnis case is commented on and approved in
Neal *vs.* Saline Co., 48 Mo., 390.
Ranney *vs.* Baeder, 50 Mo., 600.
Supervisors Fulton Co. *vs.* Miss. &. Wab. R. R. Co., 21 Ill., 338.

IV.—The subscription to stock of the "Branch Road," and the issue of bonds to pay for the same, then, depend upon the authority of the act of 1868, and that authority fails for repugnancy to Art. 11 § 14 of the Constitution of 1865, which had intercepted any future legislative authority, in the premises, to counties not conformed to the requirements of the new Constitution.

Sixth Point.—The suggestion that because there *might have been* a location of the line of the La. & Mo. R. R. R. through Callaway county under the act of 1859, and that, *in such case*, there *might have been* a valid subscription and issue of bonds under the act of 1859, (though such subscription and issue of bonds were not made until after the Constitution of 1865 went into operation), cannot relieve the actual subscription and issue of bonds from invalidity.

The opinion of the Court below seems to put the decision on this ground, at least so far as to admit of the protection of "*bona fide* holders."

Opinion Rec., fol. 131.

I. Neither the basis of fact assumed by the court, in its reasoning on this point, nor its doctrine of the authority of the county court to make the subscription actually made, nor its doctrine of the protection against actual invalidity possible in the case of a *bona fide* holder of void bonds, nor its

assumption that the plaintiff occupies that privileged position, is, it is respectfully submitted, well founded.

(*a.*) The subscription *was* made to the "Branch Road" in its stock, and *not* to the main line and its stock.

(*b.*) The plaintiff is simply found to be a holder "*for value*," without any ingredient in his title, of "want of notice," "*bona fides*," or "*innocence*."

Third finding, fol. 77.

Indeed any suggestion of want of notice of the *law* would be nugatory, and of the *facts* would be preposterous in face of the disclosure of the bond itself.

(*c.*) That the actual subscription was without authority, and the bonds wholly void, has already been insisted upon in the previous points.

II.—The Supreme Court of Missouri has passed upon this suggestion as to *possible* valid subscription and issue under the act of 1859, and its irrelevancy to support this actual subscription under the act of 1868.

State *vs.* Callaway Co. Court, 51 Mo., 395.

In condemning the actual subscription and the bonds issued as invalid under the constitution, the court states the facts of the original subscription and the subsequent subscription to the "Branch Road," and thereupon declares:

"If there had been no change in the subscription and no attempted amendment" (of the statute) "and the company had constructed their line

to the Missouri river, substantially as they have done, it *may be* that the subscription would have been perfectly legal."

P. 405.

Seventh Point.—But the suggestion that, notwithstanding the invalidity of the bonds, the benign doctrines of this court in protection of "a *bona fide* holder for value, without notice," as declared in a series of decisions, will support the judgment for the plaintiff below, will not bear examination.

1. The leading case of Knox County *vs.* Aspinwall, 21 How., 589, is followed by

   Bissell *vs.* Jeffersonville, 24 How., 287.
   Moran *vs.* Comm'rs. Miami Co., 2 Black, 722.
   Mercer Co. *vs.* Haskett, 1 Wall, 83.
   Supervisors *vs.* Schenck, 5 Wall, 772.

2. All these cases relate to conditions of the exercise of power, when the power exists by law, and this court holds the depositary of the power vested, as toward the *bona fide* purchaser, with authority to determine whether the circumstantial conditions have, in fact, been fulfilled.

The court has never imputed to an *assertion* of legal authority, by a municipal or official agency, the efficacy that would belong to the existence of such legal authority.

The case of Marsh *vs.* Fulton Co. (10 Wall, 676), was a much stronger case for the protection of the bondholder than the present, but the court laid down the limit to its own doctrines.

20 Wall 65

The court says:

"This is not a case where the party executing the instruments possessed a general capacity to contract, and where the instruments might for such reason be taken without special inquiry into their validity. It is a case where the power to contract never existed—where the instruments might, with equal authority, have been issued by any other citizen of the county. It is a case, too, where the holder was bound to look to the action of the officers of the county and ascertain whether the law had been so far followed by them as to justify the issue of the bonds. *The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder.*"

P. 683.

In this case *there had been a vote of the county*, but the court held it could not authorize a subscription to a separate stock division for a part of the road.

In the case at bar there was no vote of the county at all, though the Constitution required it.

This court has enforced the same necessity of inquiry as to the powers of public agents, even when the issue was of commercial paper.

Floyd Acceptances, 7 Wall, 676.

The Supreme Court of Missouri has passed upon the question of the invalidity of bonds without the county vote being incurable in favor of a *bona fide holder*, and maintains the defence as against such a holder.

Steines *vs.* Franklin Co., 48 Mo., 167:

"As no election was ever ordered, and no vote taken in this case, the court had no jurisdiction whatever,

4 Wall—75

and acted wholly without authority, and hence the bonds were void."

See Opinion, pp. 178–187.

State *vs.* Greene Co., 54 Mo., 540 :

" Municipal corporations having no inherent power to issue bonds, their power to issue bonds is a question of law of which all must take notice at their peril, and there can be no innocent holders without notice of such bonds."

Head note, Vories, J.

Eighth Point.—There can be no pretense that the original invalidity is helped, by subsequent ratification, such as payment of interest, and the levy of taxes for the purpose. The power to *ratify* assumes the power to originally act, and the doctrine has no application where such defect of power is the ground of invalidity.

Marsh *vs.* Fulton Co., 10 Wall, 676.
State *vs.* Saline, Co. Court, 45 Mo, 249.

Ninth Point.—The act of 1868, is invalid, as an amendment, for repugnancy to Art. 4 § 25 of the constitution, and invalid to authorize a subscription to a new corporation (1), because a new corporation could not be created by special act, and (2) for want of the condition of the county vote as above insisted upon.

Cons. Mo., Art. 8 § 4.
" " 4 § 25.
" " 11 § 14.

This invalidity of the act of 1868, has been passed upon by the Supreme Court of Missouri.

State *vs.* Saline Co. Court, 51 Mo., 350.

State *vs.* Callaway, Co. Court, 51 Mo., 395.

Last Point.—The judgment below should be reversed, and a new trial ordered.

WM. M. EVARTS,
Of Counsel for Plff. in Error

SUPREME COURT OF THE UNITED STATES.

THE COUNTY OF CALLAWAY,
STATE OF MISSOURI, *Plaintiff,*
versus
THOMAS J. FOSTER, *Defendant.*

Error to the Circuit Court of the United States for the Western District of Missouri.

BRIEF FOR DEFENDANT IN ERROR.

Foster sued Callaway county on certain bonds and coupons issued in the following form:

"No.——. $100.

"STATE OF MISSOURI.

"CALLAWAY COUNTY RAILROAD BOND.

"On the first day of January, A. D. 1873, the county of Callaway promises to pay to the Louisiana and Missouri River Railroad Company, or bearer, the sum of one hundred dollars, to bear interest from date, at the rate of nine per centum per annum, payable semi-annually on the first day of January and July in each year, as per coupons attached hereto, and after maturity to bear the same rate of interest until paid, said principal sum and interest being payable at the Missouri Bond and Stock Board of St. Louis, in the city of St. Louis, Missouri. *This bond is issued by Callaway county, by authority of the act of*

the General Assembly of the State of Missouri, approved March 10, 1859, *as amended by an act approved March* 24, 1868.

[L. S.] "Witness my hand, with the seal of said county affixed, this first day of January, 1869.

"GEO. BARTLEY,

"*Presiding Justice of Callaway County Court.*

"Attest:

"W. H. BAILEY,

"*Clerk of Callaway County Court.*

"COUPON.

"On the first day of January, 1873, Callaway county will pay to the bearer the sum of $4.50, at the Missouri Bond and Stock Board of St. Louis, Missouri, interest on Railroad Bond No.—.

"GEO. BARTLEY,

"*Presiding Justice of Callaway County Court.*

"W. H. BAILEY,

"*Clerk of Callaway County Court.*"

The defendant answered, pleading *non est factum*; that no part of the main line of the road touches the territory of Callaway county; that the subscription of stock in the Railroad Company for which the bonds sued on were issued was made solely under the authority of the amendatory act of March 24, 1868, without submission of the question of taking the stock to a vote of the electors of the county, as required by law, and that the plaintiff had taken the bonds with notice of that fact.

Plaintiff replied, charging that the road does touch the territory of the county, and that it was constructed in strict accordance with the subscription of the county; asserts that the subscription was made to the main line, and not to a branch road; that the subscription was made in January, 1868, by virtue of the act of March 10, 1859, and that no vote was necessary to authorize the subscription; that stock in the Railroad Company had been issued to the county for bonds, and that the county still held and voted it; that the county had paid a large amount of interest on the bonds, and also a large part of the principal, and was therefore estopped from raising the question of their

validity; that the road had been constructed through the county, and was then being operated.

The cause was tried before Dillon, Circuit Judge; there was judgment for the plaintiff, a finding of facts, and the defendant sued out a writ of error. The case is reported in

3 *Dillon, C. C. R. p.*, 200.

In view of the decisions made by the Supreme Court of Missouri both before and since the trial of this cause in the court below, it is deemed that all the questions raised have been settled.

The bonds were issued under the act of the General Assembly of Missouri, entitled "*An Act to incorporate the Louisiana and Missouri River Railroad Company, approved March* 10, 1859," (*see Acts Mo.* 1858, *p.* 406), and an amendatory act approved March 24, 1868, (*Acts Mo.* 1868, *p.* 97.)

The following sections are cited from the original act:

"SEC. 35. Said company shall have power to mark out, locate and construct a railroad from the city of Louisiana, in the county of Pike, by the way of Bowling Green, in said county, to some suitable point on the North Missouri Railroad, intersecting said road between the Southern limits of the town of Wellsburg, in Montgomery county, and the Northern limits of the town of Mexico, in Audrain county, thence to the Missouri river, at the most eligible point, on a line the most suitable and advantageous as regards distance, grade, cost of road, and permanent value of the same."

"SEC. 29. It shall be lawful for the County Court of any county in which any part of the route of said railroad may be, to subscribe to the stock of said company, and issue bonds of such county to raise funds to pay the stock thus subscribed."

The act of March 23, 1861, was a general act, providing that counties might take stock in railroad companies by submitting the question to the vote of the electors. That act is, however, irrelevant under the decisions that have been made by the Supreme Court of Missouri.

Section 22 of the amendatory act of March 24, 1868, is as follows:

"It shall be lawful for the company to mark out, locate and construct a branch of its road. * * * * And all subscriptions to the capital stock of said company intended to be used in the construction of said branch shall be made in separate books."

Under the act of 10th March, 1859, the defendant, Callaway county, on the 16th day of January, 1868, subscribed to the capital stock of said Railroad Company in the following words, to-wit:

"It is ordered by the court that Thos. B. Harris be, and he is hereby appointed commissioner and agent of Callaway county to take stock in and subscribe to the capital stock of the Louisiana and Missouri River Railroad Company, the sum of five hundred thousand dollars. * * * * Said subscription to be paid by the issue of county bonds as hereby ordered, * * * during the progress of the construction of said railroad from some point West or Southwest of the North Missouri Railroad, on either the Wellsville or Jefftown routes, *as surveyed through said county through the city of Fulton, and by way of New Bloomfield*, as near as practicable to the Missouri river; and it is further understood that the county of Callaway will guarantee the right of way on either of said routes aforesaid, *through said county*, to said Railroad Company; and it is further declared that the conditions upon which this subscription is based, are, that the funds shall be used exclusively in the building and construction of that part of the road lying West or Southwest of the North Missouri Railroad on either of the routes aforesaid, as the same may be adopted and located; and as said work progresses, said appropriation shall be met by the issue of bonds, as the construction and building of that part of said road as may be shown by the reports of said company to this court from time to time may demand; and also said Railroad Company shall make, keep and maintain a depot *at the city of Fulton*, on the East side of Town creek, within the corporate limits of the city of Fulton."

In pursuance of this order, the agent, Harris, made the subscription of stock for the county on the 16th day of January,

1868. On the 17th day of June, 1868, the commissioner of the county was, by order of the County Court, instructed to transfer this stock to the branch books of the Railroad Company, "*subject to such restrictions as set forth in the order authorizing the original subscription.*"

In July, 1865, the State of Missouri adopted a new Constitution, which provided that,

"The General Assembly shall not authorize any county, city or town to become a stockholder in, or to loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto."

Art. XI., Sec. XIV.

The Constitution also contained the following provision, usually inserted in such instruments:

"All statute laws of the State now in force, not inconsistent with the Constitution, shall continue in force until they shall expire by their own limitations, or be amended or repealed by the General Assembly."

It was shown that Callaway county is on the line of the railroad; and that at the time of the subscription of stock under the original charter, and before its amendment, some of the lines of the route had been run through that county. There could be, therefore, no question as to the right of the County Court to subscribe the stock.

The authority of the Legislature to amend the charter of 1859 in 1868 undoubtedly existed, as decided in the cases of

Cape Girardeau and State Line R. R. Co., 48 *Mo.*, 468; and *State v. Greene County*, 54 *Id.*, 540.

It has also been decided that the provision of the Constitution of 1865 (*Art. XI., Sec XIV.*), above quoted, was a limitation on the future power of the General Assembly, and was not intended to retroact so as to have any controlling application to laws in existence when the Constitution was adopted.

State vs. Macon Co. Court, 41 *Mo.*, 453.

It was also held that the act of 1861 did not repeal so much of the charter in question as authorized the subscription without a vote by the people.

The court said:

"A general prohibition against subscribing for stock in any corporation may well subsist with a permission to subscribe for stock in a particular corporation. Besides the seventeenth section of the general railroad law, with which the enabling act is supposed to conflict, uses no negative words. It uses words to express and permit future acts, and there is nothing to show that it intended to operate on existing or past laws. It was framed after the Constitution was adopted, and the conclusion is undeniable that it was intended simply to make the law conform to and carry out the fourteenth section of the eleventh article of that instrument."

Id. 460. See also *Beattie vs. Andrew Co.*, 56 *Id.*, 42; *Smith vs. Clark*, 54 *Mo.*, 58.

These cases clearly show that the Constitution of 1865 and the law of 1861 have nothing to do with the questions involved in this case, as they related only to future laws.

It was conceded that the plaintiff below was a *bona fide* holder of the bonds and coupons, without any notice of any defect in them.

The bonds, it will be observed, purport on their face to be issued under the authority of the acts of 1859 and 1868.

In *Smith vs. Clark*, 54 *Mo.*, 58, the Supreme Court of Missouri held that "when a subscription to a railroad company must be made by a vote of the electors, and the bonds recite that they are issued as authorized by the act, the holder would have a right to presume that the act had been complied with; and in a suit by a *bona fide* holder without actual notice of the facts, the defence that no such popular vote had been taken, would be unavailing."

This doctrine the court place on the well-known rule established by this court, citing

Knox vs. Aspinwall, 21 *How.*, 539; *Mercer Co. vs. Hackett*, 1 *Wall*, 83; *Meyer Co. vs. City of Muscatine*, *Id.*, 384; *Gelpke vs. Dubuque*, *Id.*, 175; *Thompson vs. Lee Co.*, 3 *Id.*, 327; *Havemeyer vs. Iowa Co.*, *Id.*, 294; *Grand Chute vs. Winegar*, 15 *Id.*, 355.

Had the case been decided at a later date, the court might have added

St. Joseph Township vs. Rogers, 16 *Id.*, 644.

But the county had paid a good part of the principal and interest of the bonds, and still owned and controlled the stock which it had obtained for them. In a like case this court used the following language:

"The county received in exchange for the bonds a certificate for the stock of the Railroad Company, which it held about seventeen years before the present suit was brought, and which it still holds. Having exchanged the bonds for the stock, can it retain the proceeds of the exchange, and assert against the purchaser of the bond for value that though the Legislature empowered it to make them, and put them upon the market, upon certain conditions, they were issued in disregard of the conditions? We think they cannot."

Pendleton Co. vs. Amy, 13 *Wall.*, 297.

To the same effect are:

Supervisors vs. Schenk, 5 *Id.*, 772; *Grand Chute vs. Winegar*, 15 *Id.*, 355; *Lynde vs. County*, 16 *Id.*, 6; *Nugent vs. Supervisors*, 19 *Id.*, 241.

On the whole, the following propositions seem to have been expressly adjudicated by the Supreme Court of Missouri, and by this court:

1. That the original charter was not affected by the Constitution of 1865, nor by the act of 1861.

2. That the amendment to the charter was not unconstitutional.

3. That tbe issue of the bonds was in strict conformity with the law.

4. That even if the supposed irregularities had existed, they would not have invalidated the bonds in the hands of a *bona fide* holder.

5. That in any event the county would be estopped from setting up the defences here interposed.

Respectfully,

U. M. ROSE,
For Defendant in Error.

act 1854 Revised Code
the route See 875
57 Miss 350

Evans
22 Wall 326
10 Bank 229
23 La An 449

No. 70.

In the United States Supreme Court

CALLAWAY COUNTY,
Plaintiff in Error,
vs.
THOS. J. FOSTER,
Defendant in Error.

October Term,
1876.

JOHN D. STEVENSON,
T. K. SKINKER,
Counsel for Defendant in Error.

OLIVER ADAMS & CO., PRINTERS, 16 S. FIFTH STREET, ST. LOUIS.

In the United States Supreme Court

CALLAWAY COUNTY,
Plaintiff in Error,
vs.
THOS. J. FOSTER,
Defendant in Error.

October Term,
1876.

STATEMENT.

This is a suit against Callaway County upon bonds issued in aid of the Louisiana and Missouri River Railroad Company, each of which contains a recital, that it is "issued by authority of an act of the General Assembly of the State of Missouri, approved March 10 1859 as amended by an act approved March 24 1868." The case having been tried before the Court without a jury, the Court made and certified as part of the record a special finding of the facts. From this it appears, that plaintiff is a *bona fide* holder. The facts touching the issue of the bonds are stated to be as follows: On the 16th day of January 1868 the County Court of Callaway County by an order entered of record subscribed to the stock of said Company the sum of $500,000, payable in bonds of the County, and appointed an agent to enter the subscription on the books of the Company. This subscription was made on condition *inter alia*, that the road should come by either the Wellsville or Jefftown route, as already surveyed through the county, to Fulton the county seat, thence by way of

New Bloomfield to the Missouri River, and on the further condition that it should be used exclusively in the construction of that part of the road lying west or southwest of the North Missouri Railroad on either of said routes. (Record p. 41.)

At this time this Company had power by its charter to "mark out, locate and construct a railroad from the city of Louisiana in the County of Pike, by the way of Bowling Green in said county, to some suitable point on the North Missouri Railroad, intersecting said road between the southern limits of the town of Wellsburg in Montgomery County, and the northern limits of the town of Mexico in Audrain County, thence to the Missouri River, at the most eligible point on a line the most suitable and advantageous as regards distance, grade, cost of road and permanent value of same." (Laws of Mo. 1859 407 § 35.) Acting under this authority it had already surveyed or "marked out" several lines, some of which passed through Callaway County, while others did not.

It afterwards located and built and now operates a road from Louisiana in Pike County to Mexico in Audrain, and also located and graded throughout and partially completed a road from Mexico to Glasgow, and also built and completed and now operates a road from Mexico in Audrain, via Fulton in Callaway to a point on the Missouri River opposite Jefferson City. (Record, p. 40 [4.]) These routes and localities are all laid down on the map accompanying the record.

On the 24th day of March 1868 the General Assembly passed an act amending this charter and authorizing the Company to "mark out, locate and construct a railroad from the city of Louisiana in Pike County, by the way of or near the town of Bowling Green, and thence to such point on either the north or south bank of the Missouri River as may be selected by the board of directors;" and also to "mark out, locate and construct a branch of its said road, commencing at a point on the line thereof to be selected by the board, not further east than the town of Bowling Green, and running thence by the most practicable and advantageous route to any point on the Missouri River between the town of St. Aubert in Osage County,

and the city of Boonville in Cooper County." It was also provided that this branch should be known as the South Branch, and all subscriptions to the *capital stock of said Company* intended to be used in the construction of said branch should be made in separate books to be opened under the direction of the board at such places as might be selected for that purpose, and should be faithfully applied to the building of the branch and not to the main line. (Laws of Mo. 1868 p. 103 §§21, 22.)

The Company accepted the amended charter, and proceeded to locate the road thereunder, and on the 17th of June 1868, the County Court of Callaway by an order entered of record approved this course, and directed the County agent to transfer the stock already taken in the Company "to the branch books of said company," subject, however, to all the restrictions and conditions of the original subscription and to such others as might thereafter be made by the Court and the board of directors. This transfer was accordingly made on the same day, as appears by the agent's report of September 21st. (Record p. 41.) On the 28th of October following, the Court ordered that the bonds required to pay the subscription should be issued and placed in the hand of commissioners, to be delivered to the railroad company as the work progressed, in accordance with the terms of subscription, and commissioners were appointed to carry out the order. (Record pp. 42 43.) On the 17th of February 1869, the Court declined to accede to a suggestion that the Company be permitted to change the location of its road from the Jefftown route to one via Mexico. On the 19th of May 1870, the Court reconsidered this resolution, and by an order entered of record gave its consent, that the south branch should be constructed to any point on the main line embraced within the terms of the charter, under certain restrictions not material to notice here. (Record p. 47.)

The acts of the General Assembly referred to on the face of the bond are:

(1) The act approved March 10 1859, entitled "An act to in-

corporate the Louisiana and Missouri River Railroad Company." (Laws of Mo. 1859 p. 400.)

(2) The act approved March 24th, 1868, entitled "An act to amend an act entitled an act to incorporate the Louisiana and Missouri River Railroad Company, by increasing the amount of the capital stock of said Company, defining more explicitly the power of the board of directors to fix the western terminus of said road, authorizing the location and construction of a branch road, and conferring upon said board the necessary powers to carry into effect the several objects contemplated by this charter, and also by striking out sections eleven, eighteen, twenty-seven, thirty and thirty-one of said act." (Laws of Mo. 1868 p. 103.)

Provisions of the Constitution of Missouri of 1865, bearing on the case, are:

ARTICLE IV. § 25. No act shall be revived or re-enacted by mere reference to the title thereof, nor shall any act be amended by providing that designated words thereof shall be struck out and others inserted in lieu thereof; but in every such case the act revived or re-enacted, or *the act or part of act amended shall be set forth and published at lenghth as if it were an original act.*

ART. IV. § 32. No law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in the title; but if any subject embraced in an act be not expressed in the title, such act shall be void only as so much thereof as is not expressed.

ART. VIII. § 4. Corporations may be formed under general laws, but shall not be created by special acts, except for municipal purposes.

ART. XI. §3. All statute laws now in force not inconsistent with the Constitution, shall continue in force until they shall expire by their own limitations *or be annulled* or repealed.

ART. XI. § 14. The General Assembly shall not authorize any county, city or town to become a stockholder in or to loan its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto.—(Wagner's Mo. Stat., pp. 48, 49, 58, 61, 62.)

POINTS AND AUTHORITIES.

We insist:

1. *That the act of* 1868 *is not repugnant to any provision of the Constitution.*

2. *That if it be repugnant, then the bonds, as in favor of the defendant in error, an innocent holder, find sufficient authorization in the act of* 1859 *and are valid.*

I.

It is claimed that the act of 1868 is void for repugnance to several of the above provisions of the Constitution.

(A.) Art. 8 sec. 4 is one of those supposed to be violated. That section prohibits the creation of a corporation by special act. We deny that there is any infringement of this provision here. This is not an original act of incorporation; it is but an amendment of an existing charter. The act of 1859 was in full force, and the power to subscribe conferred by it on county courts was not withdrawn by the Constitution of 1865. This has been the settled law ever since the decision in State *vs.* Macon County Court 41 Mo. p. 453. See also State *vs.* Sullivan County Court 51 Mo. p. 522.

That that instrument expressly reserved to the Legislature the power to amend such charters was decided in State *vs.* Cape Girardeau etc. R. R. Co. 48 Mo. p. 468 construing Art. 11, sec. 3, *supra.*

That this is not an original act of incorporation, appears,

1st. From its title.

2d. From its body.

FIRST. The title speaks for itself; it is express that the act is intended to amend the charter of the Louisiana and Missouri River R. R. Co. That the title of an act is part of it and may be used to determine its force and effect is abundantly shown by the authorities.

In Conn. Mut. L. Ins. Co. *vs.* Albert 39 Mo. p. 181 it is said "the better rule is, to presume that the true intent and meaning is to be found in the title, unless it is plainly contradicted by express terms in the body of the act."

In State *vs.* Saline County Court, 51 Mo. Wagner J. said (p. 392), construing Constitution of Mo. Art. 4 sec. 32, and discussing this very act: "Under this clause the title performs an important function. The subject-matter of the act must be clearly expressed in the title, and if any subject embraced in the act is not expressed in the title, it is void. An act without a title would manifestly be a nullity under this provision of the Constitution and therefore it follows inevitably that the title forms and constitutes part of the act."

In Nazro *vs.* Merchants Mut. Ins. Co. 14 Wisconsin p. 205, the court says, "Legislative enactments are not to be defeated on account of mistakes, errors or omissions any more than other writings, provided the intention of the Legislature can be collected from the whole statute. If the mistake renders the intention doubtful, we may *look to the title* and preamble as well as at the body or purview of the act for assistance in arriving at it *and not until all these fail, can the act be held inoperative*. This act is private in its nature, and hence the title becomes an important source of information in case of ambiguity. The Constitution declares that 'no private or local bill, which may be passed by the Legislature, shall embrace more than one subject and that shall be expressed in the title.' It must be presumed that due regard will be paid to this provision by the Legislature, and therefore that subject of the bill is truly expressed in the title." See also

Dodd *vs.* The State, 18 Ind.

Sedgwick on Stat. and Const. L., 39 (*n*).

SECOND, As to the body of the act:

(*a.*) The same corporate name is used. The charter of the old Louisiana and Missouri River Company was still in force in 1868; the Company had ten years from March 10th, 1859, in which to commence the work of construction. See charter, §§ 2, 26. It was found as a fact that it was the old company which accepted this amended charter. (Record, p. 41.)

(*b.*) Identically the same individuals are named as corporators in both acts. (See § 2, of each act.) Nine years had

elapsed during which not a few of the original twenty-two corporators must have departed this life; yet so careful is the Legislature to preserve the identity of the corporation, that it retains the names of all the original members.

(*c.*) The routes designated in the two acts are much the same, differing only in the particulars pointed out by the title to the latter act. (Act of 1859 § 35; 1868 §§ 21, 22.)

In State *vs.* Coffee 59 Mo. 59, territorial identity was held to determine the question whether or not an act purporting to be an amendment to a town charter was in fact an amendment or an original act of incorporation. It was decided that if the territory covered by the act was in part the same as that covered by the original charter, it was an amendment; and it lost that charter only when it was made to appear to the Court, that in point of fact the two territories were totally different.

(*d.*) With a few exceptions the same powers are bestowed, and the restrictions imposed in the same language. See the several sections of the two acts as given below.

(*e.*) The thirty-fourth section of the act of 1868 requires said Company to file their acceptance of the provisions of that act within ninety days in order that the act may take effect. What does this mean? Is this such a provision as is inserted in original acts of incorporation? Certainly not. If a charter is granted to a corporation and it organizes under that charter, it *ipso facto* accepts the terms therein granted by the State. But if an existing charter is amended, it may that the Company will deny the right to make the amendment, or will undertake at one time to avail itself of the privileges therein conferred, while at another repudiating the restrictions imposed. To obviate any doubts or difficulties on this head the Company is required to accept the amended charter by a solemn and public instrument. This requirement clearly indicates what the Legislature intended in passing this act.

(*f.*) If the act of 1868 be construed as an original act, a glaring inconsistency is discovered between the second and thir-

ty-fourth sections. The second permits the Company to lie dormant, taking no action for ten years. Its says:

> "They (the corporators named) shall, within ten years after the passage of this act * * * meet and organize as a board of directors;"

while the thirty-fourth section requires them to take immediate action, for it says,

> "Said Company shall file their acceptance of all the provisions of this act within 90 days from the passage thereof * * * otherwise this act shall be null and void."

(*g.*) Sec. 33 of the act of '68 exempts the Company from certain restrictions of the act concerning corporations, approved November 23, 1855. (R. S. Mo. 1855 pp. 369-404.) In 1868 this act was not in force, having been repealed by the act adopted March 19 1866. (Laws of Mo. 1866 p. 20. Gen. Stats. Mo. 1866 p. 326.) If sec. 33 be understood as part of the act of 1859 re-enacted, it constitutes an exemption from all restrictions imposed by the sections named of the act of 1855, and all equivalent provisions of all future laws; if it be understood as part of a new and original act, it is without meaning as granting exemption from a law already repealed.

Upon this branch of the case we conclude it does violence to all precedent to suppose that the Legislature intended to charter a new corporation with the same name and the same corporators, with much the same route and substantially the same powers and duties as one already in existence. Add to this that the title expressly negatives any such intention, declaring the act to be amendatory, and the last section requires the existing Company to accept its terms. Then consider the strange inconsistency between the second and thirty-fourth sections, and the futility of the thirty-third—if the theory be adopted that it is an original charter—and it seems to us there can be no doubt of its true character.

After all what is there lacking to this act that raises doubt? Nothing but the absence of a few formal words— "An act entitled an act to incorporate the Louisiana and Missouri River

Railroad Company is hereby amended so as to read as follows." Had the first section of the act opened with these words it would have been in the ordinary form of amended statutes and no question would ever have been raised as to its constitutionality.

The omission of these formal words is therefore the only ground upon which to base a claim that the act is invalid. Is this fatal?

The case of Cape Girardeau *vs.* Reilly 52 Mo. 424 shows that the omission of merely formal clauses will be disregarded. The Constitution, Art. 4 Sec. 26 prescribes an enacting clause for all acts of Assembly in these words: "Be it enacted by the General Assembly of the State of Missouri as follows:" In that case it appeared that the enacting clause had been wholly omitted, and it was argued that the act in question must therefore fail, but the Court disregarded the objection and gave effect to the act.

Now if the Court can supply an *enacting clause* in order to support the act, will it hesitate for like reason to supply an *amending clause*, if that be necessary? See Nazro *vs.* the Ins. Co. *supra.*

So far from being in any way a violation or evasion of the Constitution in point of form, this act is an exact compliance with it. Prior to 1865, it was sufficient that an act amending an existing law should designate words to be stricken out and others to be inserted in their place; but Art. 4 Sec. 25 *supra* prohibited this mode of legislation, and required that "in every such case the act revived or re-enacted on the act or part of act amended shall be set forth and published at length *as if it were an original act or provision.*" In order to indicate clearly to the Court the exactness with which this injunction has been complied with, we here insert the two acts in parallel columns, indicating by the type the changes made in the latter, and nothing by the words "none to correspond" in the opposite column, what sections of the old act are omitted in the new and what sections of the new are original.

ACT OF 1868.

SECTION 1. A company is hereby incorporated called "the Louisiana and Missouri River railroad company," the capital stock of which shall be *ten* millions of dollars, to be divided into shares of one hundred dollars each, the holders of which, their successors and assigns, shall constitute a body *politic and corporate*, and by that name shall have continued succession, may sue and be sued, plead and be impleaded *in all the courts of this state;* may make and use a common seal, and change or alter the same *at pleasure;* shall be able, in law and equity, to make contracts; may take, hold, possess, and enjoy the fee simple or other title in and to any real estate, and may sell, convey, or mortgage the same; and may make by-laws and regulations, not repugnant to the laws or constitution of the United States or of this state, and *shall have and exercise all the powers that may be necessary and proper to carry into effect the purposes of this act.*

SEC. 2. Edwin Draper, John B. Henderson, James O. Broadhead, Josephus Irvine, Aaron McPike, William L. Gatewood, Thomas J. C. Fagg, Simeon T. Robinson, Silas W. Furber, William C. Hardin, Robert Allison, and Hiram Womack, of Pike county; Mortimer McIlhaney, John P. Clark, Norman Lackland, Preston B. Reed, Robert W. Sinclair, and Armstead Botts, of the county of Audrain; Samuel Crutcher, Josiah Whitsides, Benjamin Sharp, and William R. Harris, of the county of Montgomery, or any nine of them, shall constitute the first board of directors under

ACT OF 1859.

SECTION 1. A company is hereby incorporated, called "The Louisiana and Missouri River Railroad Company," the capital stock of which shall be *three* millions of dollars, to be divided into shares of one hundred dollars each, the holders of which, their successors and assigns, shall constitute a body *corporate and politic;* and by the name aforesaid shall have continued succession, may sue and be sued, plead and be impleaded, defend and be defended against; and make and use a common seal, and change or alter the same; and shall be able, in law and equity, to make contracts; may take, hold and possess and enjoy the fee simple or other title in and to any real estate, and may sell, convey or mortgage the same; and may make by-laws and regulations *proper and necessary to carry into effect the provisions of this act*, not repugnant to the laws or constitution of the United States, or of this State; *and shall have the usual and necessary powers for such purpose.*

SEC. 2. Edwin Draper, John B. Henderson, James O. Broadhead, Josephus Irvine, Aaron McPike, William L. Gatewood, Thomas J. C. Fagg, Simeon P. Robinson, Silas W. Farber, William C. Hardin, Robert Allison, and Hiram Wormack, of Pike county; Mortimer McIlhaney, John P. Clark, Norman Lackland, Preston B. Reed, Robert W. Sinclair, and Armstead Botts, of the county of Audrain; Samuel Crutcher, Josiah Whitesides, Benjamin Sharp, and William R. Harris, of the county of Montgomery, or any nine of them, shall constitute the first Board of Directors under

this act, and shall hold their offices until their successors be qualified. They shall, within ten years after the passage of this act, meet at such time and place as shall be designated by any three of them and organize as a board of directors; and, when organized, they shall cause books to be opened for the subscription of the capital stock of said company, at such time and place as they shall designate, under the supervision of such person as they *may* appoint—may continue such books open as they may deem proper, and *at any time* reopen *the same*, when necessary, until the whole amount of stock shall be subscribed.

SEC. 3. So soon as fifteen hundred shares shall be subscribed the directors shall cause an election to be held for nine directors, at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

SEC. 4. The stockholders of said company shall meet on the first Monday in May, in each year, at such place as may be designated by the by laws of said company, of which at least twenty days' previous notice shall be given in two or more newspapers published in *this* state, and choose, by ballot, by a majority of the votes present, to be given in person or by proxy, *in the manner provided for in the by-laws*, thirteen directors, owners of stock in the company; the said directors, and those hereafter to be chosen in pursuance of the provisions of this act, at their first meeting shall choose, by ballot, one of their number as president of said company; and said president and directors shall di-

this act, and shall hold their offices until their successors be qualified; they shall within ten years after the passage of this act, meet at such time and place as shall be designated by any three of them, and organize as a Board of Directors; and when organized, they shall cause books to be opened for the subscription of the capital stock of said company, at such time and place as they shall designate, under the supervision of such person as they shall appoint; and may continue *them* open as they may deem proper, and may reopen *said books*, when necessary, until the whole stock shall be subscribed.

SEC. 3. So soon as fifteen hundred shares shall be subscribed, the Directors shall cause an election to be held for nine Directors, at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

SEC. 4. The stockholders of said company shall meet on the first Monday in May, in each year, at such place as may be designated by the by-laws of said company, of which at least twenty days' previous notice shall be given, in two or more newspapers published in *the* State, and choose by ballot, by a majority of the votes present, to be given in person or by proxy, thirteen Directors, owners of stock in the company; the said Directors, and those hereafter to be chosen, in pursuance of the provisions of this act, at their first meeting, shall choose, by ballot, one from their number as President of said company; and said President and Directors shall direct the affairs of said

rect the affairs of said company, and hold their *respective* offices, for *the term of* one year and until *their successors* are *duly* elected and qualified.

SEC. 5. At every annual meeting the stockholders shall have power, by a majority of the votes given, to alter or repeal their by-laws and regulations, and may meet at such other times and places as may be appointed by the president and directors, upon such notice as may be prescribed by the by laws of the company; and the president, at the request, in writing, of any number of the stockholders representing not less than one-seventh in number and interest, shall cause a special meeting *to be held at the point designated in such request*, upon giving the like notice of the time, place, and objects of the meeting. Such objects, and *no others*, shall be acted upon at such meeting, and *no business shall* be transacted at such meeting unless a majority of *all* the stockholders be there represented; but the meeting may adjourn from day to day until such majority shall be *represented*.

SEC. 6. The election for directors shall be conducted in the following manner: The directors for the time being shall appoint three stockholders, being neither directors nor candidates, who shall take and subscribe an oath or affirmation, *before some officer authorized to administer oaths for general purposes*, well and truly, according to law, to conduct said election to the best of their knowledge and ability. The judges *so chosen and qualified* shall decide upon the qualifications of *the* voters, and when the election is

company, and hold their offices for one year, and until *others* are elected and qualified.

SEC. 5. At every annual meeting the *said* stockholders shall have power, by a majority of the votes given, to alter or repeal their by-laws and regulations, and may meet at such other times and places as may be appointed by the President and Directors, upon such notice as may be prescribed by the by-laws of said company; and the President, at the request in writing, of any number of the stockholders representing not less than one-seventh in number and interest, shall cause a special meeting, upon giving the like notice of time, place and objects of the meeting; and such objects, and *none other*, shall be acted upon at such meeting, *nor shall* any business be transacted at such meeting unless a majority of the stockholders be there represented; but the meeting may adjourn from day to day, until such majority shall be *present*.

SEC. 6. The election for Directors shall be conducted in the following manner: The Directors for the time being shall appoint three stockholders, being neither Directors nor candidates, who shall take and subscribe an oath, or affirmation, before a *Justice of the Peace*, well and truly according to law to conduct said election to the best of their knowledge and ability. The Judges shall decide upon the qualifications of voters, and when the election is closed, count the votes, and declare who has been elected.

closed, count the votes and declare who has been elected. In case no election shall be held at the time specified, the corporation shall not by that reason be dissolved, but it shall be lawful to hold an election for directors any day thereafter, by giving at least ten days' previous notice of the time and place of holding said election, in the newspapers aforesaid. In case of the death, resignation, or removal from the state of a director, the vacancy *thus occasioned shall* be filled by the board *at its first regular meeting thereafter, or, upon a failure to meet at such time, as soon thereafter as the board can be called together for that purpose*. At all general meetings or elections by the stockholders, each share of stock under the number of twenty shall entitle the holder to one vote, and each stockholder *having* over the number of twenty shares shall have one vote for every two shares exceeding *that number*, and not exceeding two hundred; one vote for every five shares exceeding two hundred and not exceeding five hundred; one vote for every ten shares exceeding five hundred. Each ballot shall have endorsed thereon the number of shares thereby represented; but no person (females, sick persons, and *non-residents of the county where the election is held*) residing within ten miles of the place of general meeting, *or such as may be selected for the holding of an election*, shall be entitled to vote by proxy, nor shall any proxy be received or entitle the holder thereof to vote, unless the same be duly dated and executed within twelve months next preceding such election or general meeting; and

In case no election shall be had at the time specified, the corporation shall not by that reason be dissolved, but it shall be lawful to hold an election for Directors any day thereafter, by giving at least ten days' previous notice of the time and place of holding said election, in the newspapers aforesaid. In case of death, resignation, or removal from this State of a Director, *or of a failure to elect in case of a tie vote*, the vacancy may be filled by the Board *of Directors*. At all general meetings or elections by the stockholders, each share of the stock under the number of twenty shall entitle the holder to one vote; and each stockholder *holding* over the number of twenty shares, shall have one vote for every two shares exceeding *twenty*, and not exceeding two hundred; and one vote for every five shares exceeding two hundred, and not exceeding five hundred; and one vote for every ten shares exceeding five hundred; and each ballot shall have endorsed thereon the number of shares thereby represented; but no person *or party*, (females, sick persons, and *absentees from the county, excepted*,) residing within ten miles of the place *appointed for every such election or general meeting*, shall be entitled to vote by proxy, nor shall any proxy be received, nor entitle the holder thereof to vote, unless the same be duly dated and executed within twelve months next preceding such election or general meeting; and every such proxy received and voted upon, as aforesaid, shall be *retained* and filed amongst the papers of the company, until after the next annual meeting or election,

every such proxy received and voted upon as aforesaid shall be *returned* and filed among the papers of the company until after the next annual meeting or election, subject to the inspection or examination of any stockholder who may desire it.

SEC. 7. The company shall have power, by themselves or agents, to enter upon and take from any land in the neighborhood of the line of their railroad, earth, gravel, stone, wood, water, or other material necessary for the construction or operation of said road; and, for the purpose of procuring water for their use, may lay pipes, erect pumps, dams, and reservoirs, if the owners of said land and the company shall agree upon the damages *thereby occasioned* to the said lands and appurtenances; or, if they cannot agree, the damages shall be ascertained by three disinterested householders, who, being appointed for that purpose by any justice of the peace thereto required, by either of the parties, shall be sworn *faithfully to perform the duties enjoined upon them*, and shall then ascertain, upon their own view of the ground and *the materials so taken, the amount of compensation to be awarded for the injury done such owner;* provided, however, that *in all cases it shall be shown to the satisfaction of the justice that* ten days' previous notice of *such application* and the time *and place* of making the same, has been given to the other party. Either party not satisfied with *such* award may appeal to the circuit court of the county in which said lands may lie, which may at its discretion confirm *the* subject to the inspection or examination of any stockholder who may desire it.

SEC. 7. The company shall have power, by themselves or agents, to enter upon and take from any land in the neighborhood of the line of their railroad, earth, gravel, stone, wood, water, or other material necessary for the construction or operation of said road; and for the purposes of procuring water for their use, may lay pipes, erect pumps, dams and reservoirs, if the owner of said land and the said company shall agree upon the damages *they may do* to said lands and its appurtenances; or if they cannot agree, the damages shall be ascertained by three disinterested householders, who, being appointed for that purpose, by any Justice of the Peace thereto required by either of the parties, shall be sworn *by him*, and shall then ascertain the compensation upon their own view of the ground, and *of the road, earth, stone or gravel which may have been taken therefrom, and the injury done in taking them; Provided, however*, That *it shall be the duty of the party making the application to show the Justice of the Peace*, that ten days' previous notice of the time of making the same has been given to the other party, *or to some one of them; and no award which may be given, under any appointment without such notice, shall be obligatory or binding upon either party;* and either party not satisfied with the award, may

same and enter it of record, or, as often as *may be deemed* necessary, may supercede the viewers, or any of them, appoint others in their stead, and direct another view and award to be made, in the manner aforesaid. If any justice of the peace or freeholder shall neglect or refuse to perform the *duties herein enjoined upon him without a reasonable excuse therefor, he* shall forfeit and pay to the party making such application the sum of twenty-five dollars, to be recovered *by civil action* before any justice of the peace in the county in which he is a *resident, and such recovery shall be no bar to an action by the party aggrieved, before any court of competent jurisdiction, for the amount of damages sustained thereby.*

SEC. 8 The capital stock, together with all machines, wagons, cars, engines, or carriages belonging to the company, as well as all their works and other property and all profits which shall arise from the same, shall be vested in the respective shareholders of the company forever, in proportion to their respective shares, and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatever for the period of five years from and after the passage of this act. The said company shall have power, from time to time, to borrow such sums of money as may be necessary for completing, *equipping*, or operating their said road, *not to exceed in the aggregate a sum equal to fifteen thousand dollars per mile of the entire line of said road, and may issue and dispose of its*

appeal to the Circuit Court of the county in which said lands may lie, which may, at its discretion, confirm *the said award* and enter it of record, or as often as *they may deem it* necessary, may supercede the viewers, or any of them, appoint others in their stead, and direct another view or award to be made, in the manner aforesaid. If any Justice or freeholder shall refuse or neglect to perform *the duties assigned them respectively, as prescribed in this section, upon being thereto required, by either party, as aforesaid, such Justice or freeholder* shall forfeit and pay to such person making the application a sum not exceeding twenty-five dollars, to be recovered before any Justice of the Peace of the county of which he is *an inhabitant, and shall moreover be liable to the action to the party aggrieved.*

SEC. 8. The capital stock, together with all machines, wagons, cars, engines or carriages belonging to the company, together with all their works and other property, and all profits which shall arise from the same, shall be vested in the respective shareholder of the company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatever for the period of five years from and after the passage of this act. The said company shall have power from time to time to borrow such sums of money as may be necessary, *subject to the prior lien of the State*, for completing and *finishing* or operating their railroad, *and issue and dispose of their bonds for any amount so borrowed not exceeding their unsubscribed capital*

bonds in such sums as may be deemed best, to bear interest at such rate not exceeding ten per cent. per annum, payable when and where the board may direct, and to run for such period of time as the best interests of the corporation may require, not exceeding twenty years; and said bonds, when so issued and negotiated, shall constitute a first mortgage or lien upon said road and upon all of the corporate property and franchises of the said company. The *board of* directors may, at any time, and under such regulations as *may be deemed necessary and proper*, confer upon the holder of any bonds issued as aforesaid the right to convert the *amount* due and owing thereon into stock of said company.

SEC. 9. When payments for the stock of any subscriber shall be fully *made*, the *board of* directors shall *cause* one or more certificates of such stock, signed by the president and countersigned by the *secretary*, under the seal of the company, to be delivered to the *party entitled thereto, or, in case of his or her death, then to the personal representative of such deceased person*, which certificates shall be transferable *upon the books of the company only*, and when so transferred shall be delivered up to the president and canceled, and *others* issued to the assignees *in lieu thereof*. All assignment of shares partially paid in shall be entered upon the books of the company; but such assignment shall in no wise exempt the assignor or his representative from liability for the payment of *any sum remaining unpaid* upon the stock so assigned, if the assignee or his representatives shall fail *or refuse* to pay the same.

and to mortgage, if necessary, their corporate property and franchises, or any part thereof, to secure the payment of any debt contracted by the company as aforesaid; and the Directors *of the company* may confer on any holder of any bonds issued for money borrowed as aforesaid, the right to convert the *principal* due or owing thereon into stock of said company, at any time *not exceeding ten years from the date of the bond, under such regulations as the Directors may see fit to adopt.*

SEC. 9. When payment for the stock of any subscriber *or stockholder* shall be fully *paid*, the *President and* Directors shall deliver one or more certificates of such stock, signed by the President and countersigned by the *Treasurer*, under the seal of the company, to *such subscriber or stockholder for the number of shares belonging to him or her;* which certificate shall be transferable, *in a book to be kept for that purpose by the company*, and when transferred, shall be delivered up to the President and canceled, and *new certificates* be issued the assignees. All assignment of shares partially paid in, shall be entered upon the books of the company; but such assignment shall in nowise exempt the assignor or his representatives from liabilities for the payment of *all sums due* upon the stock assigned by him, if the assignee or his representatives fail to pay the same.

SEC. 10. Dividends of so much of the profits of said company as shall appear advisable to the *board of* directors shall be declared semi-annually, and be paid to the stockholders or their representatives, on application at the office of said company, at any time after the expiration of ten days from the time of declaring the same; but the dividends shall in no case exceed the actual amount of net profits of said company, so that the capital stock shall never be impaired thereby; and if the said *board* shall make any dividends which shall impair the capital stock of said company, the directors consenting thereto shall be liable, in their individual capacities, to the company for the amount of capital stock so divided; and each director present when such dividend shall be declared, shall be considered as consenting thereto, unless he immediately enter his protest on the minutes of the board, and give public notice to the stockholders of the declaring of such dividend. *Nothing contained in this section shall be so construed as to take away from the board of directors the power to reserve and set apart such portion of the profits as may seem necessary as a contingent fund to meet any losses or expenses that may be incurred in operating the road.*

SEC. 11. So soon as the board of directors shall be chosen and organized, as hereinbefore directed, it shall, in addition to the election of a president, proceed to choose, by ballot, a secretary and treasurer, neither of whom shall be a member of said board, and who shall, before entering upon the duties of their

SEC. 10. Dividends of so much of the profits of said company as shall appear advisable to the Directors shall be declared semi-annually, and be paid to the stockholders or their *legal* representatives on application at the office of said company any time after the expiration of ten days from the time of declaring the same; but the dividends shall in no case exceed the actual amount of net profits of said company, so that the capital stock shall never be impaired thereby; and if the said Directors shall make any dividends which shall impair the capital stock of said company, the Directors consenting thereto shall be liable, in their individual capacities, to the company for the amount of capital stock so divided, and each Director present when such dividend shall be declared shall be considered as consenting thereto, unless he immediately enter his protest on the minutes of the Board, and give public notice to the stockholders of the declaring of such dividend.

(None to correspond.)

said offices, execute, respectively, a good and sufficient bond, conditioned for the faithful discharge of the duties imposed upon them by this act or by any order or requirement of the said board; said bonds shall be payable to the order of said company by its corporate name, and the amount of penalty, as well as the number and character of the sureties, to each, shall, in every case, be fixed and determined by the board. The said officers shall hold their respective offices for the term of twelve months (unless sooner removed by the board for good cause), and until their successors are duly chosen and qualified.

SEC. 12. The *board of* directors *may, from time to time*, appoint such agents, clerks, engineers, superintendents, and other officers, servants, *and employees* of said company *as the business and interests of the company may seem to require;* shall *cause* a correct journal of its proceedings, as well as correct books and accounts *of all its transactions to be kept, which shall, at all times, be open to the inspection of any stockholder or other person interested in said company;* it shall determine, by its by-laws, what number, *not less than a majority of the whole*, shall constitute a quorum *for business;* may appoint committees, and fill all vacancies in any office under said company. It shall likewise fix the *amount of* salaries to *be paid to* each of the officers, agents, *and others herein authorized to be appointed;* take such security *for the discharge of their duties as it may direct*, and, in general, adopt all such measures and acts as will be best calculated to promote the pros-

SEC. 20. The Directors shall appoint agents, clerks, engineers, superintendents and other officers and servants for said company; shall keep a journal of their proceedings; shall cause correct books and accounts to be kept; they may determine by law what number of Directors shall constitute a quorum, and may appoint committees, fill all vacancies in any office under said company; they shall fix the salaries of the officers and agents of said company; they may take security from their officers and agents; may adopt such measures and acts as will be best calculated to promote the prosperity and interest of said company.

perity and interest of said company.

SEC. 13. The *board* shall make and advertise calls for the payments of capital stock at such time and in such manner as *it* may deem proper, and if any stockholder shall fail to pay such requisition within ten days after the time appointed, the *same may be recovered* with interest, and, if not collected, his stock may be declared forfeited and sold. No delinquent stockholder shall vote *at any election held* by said company.

SEC. 14. Said *board* may take voluntary relinquishment of the right of way for said road, *as well as conveyances of land for the necessary depots, warehouses, engine houses, machine shops, water stations, stopping stages, and turnouts;* and if such lands shall belong to minors, in whole or in part, the guardian or curator, *under the directions and approval of the court having the proper jurisdiction, may convey to the said company so much as may be required for said purposes.*

SEC. 15. If *the* owner of any tract of land through which said road shall pass shall refuse to relinquish the right of way to the company, or *to make a voluntary conveyance of the land necessary for the purposes mentioned in the preceding section*, or if such owner be an infant, person of unsound mind, or non-

SEC. 21. The *Directors* shall make and advertise calls for the payment of capital stock at such time and in such manner as *they* may deem proper, and if any stockholder shall fail to pay such requisition within ten days after the time appointed, *said company may recover the same* with interest, and if not collected, may declare the stock forfeited, and sell the same; and no delinquent stockholder shall vote in said company.

SEC. 18. *The power for condemning lands for the right of way granted by the law regulating corporations shall be construed to include necessary lands required for depots, engines, and warehouses, machine shops, water stastations, stopping stages and turnouts.*

SEC. 22. Said *company* may take voluntary relinquishments of the right of way for said road and the necessary depots and water stations; and if *the land through which said road shall pass* shall belong to minors, in whole or in part, the guardian or curator shall *have power to convey to said company so much of said land as may be necessary for the purpose aforesaid, on fair and equitable terms; but every such conveyance by a guardian shall be subject to the approval or rejection of the Probate or County Courts in which such guardianship is pending.*

SEC. 23. If *any* owner of any tract of land through which said road shall pass, shall refuse to relinquish the right of way *for said road* to said company, or if the owner be infants or persons of unsonnd mind or non-resident of the State, the facts of the case shall be specifically stated to *the Judge of* the Circuit

resident of the state, the facts of the case shall be specifically stated to the circuit court of the county in which said lands are situated, and said *court* shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the lands, and the advantages and disadvantages of the road, *and its appurtenances to the same, and as soon as may be* report, under oath, what damages are done to the same or any improvement thereon, stating the amount of damages assessed, and shall return a plat of the lands thus condemned. Notice of such application shall be given to the owner of the land, *or, if he be a minor, then to his guardian, at least* five days previous thereto if such owner be a resident of this state; if a non-resident, by the service of actual notice or publication in some newspaper *printed in this state* for four *successive* weeks *prior to the time of making the same.*

SEC. 16. If no valid objection be made to the report *of the viewers, as provided for in the preceding section, the court shall, within three days after the filing of the same, if the term shall continue so long, if not, then before the end of such term,* enter up a judgment in favor of the owner of such lands, and against the company for the amount of damages assessed, and an order shall also be made vesting in said company, *for the purposes aforesaid,* the title of the land in such plat and report described. *The court, for any sufficient cause appearing may set aside the said report, and appoint three other persons of like qualifications, who shall proceed in the same manner, and make their report until a* Court of the county in which said lands are situated, and said *Judge* shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the lands and the advantages and disadvantages of the road *to the same,* and shall report under oath what damages are done to the same or any improvement thereon, stating the amount of damages assessed, and shall return a plat of the lands thus condemned. Notice of such application *to such Judge* shall be given to the owner of such land five days before the making of the application, if such owner reside in this State, *or to his guardian;* and if such owner be a non-resident *of this State,* he may be served with actual notice or by an advertisement four weeks in some public newspaper.

SEC. 24. *The persons appointed to view and value such land, shall file their report and plat in the office of the Clerk of the Circuit Court of the county in which the land or any part thereof is situated;* and if no valid objections be made to said report, the court shall enter judgment in favor of such owner against such company for the amount of damages assessed, and he shall make an order vesting in said company the fee simple title of the land in such plat and report described; *objections to such report must be filed within ten days after the same shall be filed, which objections shall be examined by said Judge in term time or in vacation, and by judgment confirm said report,*

report is confirmed; provided, that, in order that the work of construction of said road may not be impeded, after said viewers have made and filed their report and plat, as aforesaid, the company, after having made a tender of the amount of damages to the person *entitled thereto*, or made a deposit of the sum with the clerk to the court in which the case is pending, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arisen *in reference thereto.* In all such cases the costs shall be adjudged according to the equity *between the parties* and the court shall have power to make such orders, and to take such other steps as will promote the ends of justice between the owners of such lands and the company.

SEC. 17. Said company may build said railroad along or across any state or county road, or wharves of any city or town, and over any stream or highway; but whenever said road shall cross any state or county road, said company shall keep good and sufficient causeways or adequate facilities for crossing the same; and said road shall not be so constructed as to prevent the public from using any road, street or highway along or across which it may pass; and when said railroad may be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a drawbridge, so that in no case shall the free navigation of said river be

or may set the same aside and appoint three other viewers, who shall proceed in the same manner, and make their report, until a report is confirmed; Provided, That in order that the work of construction of said road may not be impeded, that after said viewers have made and filed their report and plat *in the office* as aforesaid, the company, after having made a tender of the amount of damages to the person *or persons*, or made a deposit of the same with the Clerk of the *County* Court in which the case may be pending, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arisen. In all such cases the court shall adjudge the costs of such proceedings according to equity, and the court shall have power to make such order and take such other steps as will promote the end of justice between the owners of such land and the company.

SEC. 25. Said company may build said road along or across any State or county road, *street*, wharves of any city or town, and over any stream or highway; but whenever said road shall cross any State or county road, said company shall keep good and sufficient causeways or adequate facilities for crossing the same; and said railroad shall not be so constructed as to prevent the public from using any road, street or highway, along or across which it may pass; and when said railroad shall be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a drawbridge, so that in no case shall the free navigation of said riv-

obstructed. When any person shall own lands on both sides of said road said company, when required to do so, shall make and keep in good repair one causeway, or other adequate means of crossing the same.

SEC. 18. *The company hereby incorporated shall commence the construction* of the said road within ten years after the passage of this act, and shall complete the same within twenty years thereafter, and shall have power to use, manage, control, and enjoy the same; shall determine what kind of carriages shall be used thereon, and by whom and in what manner; shall determine the manner, terms, and conditions in which merchandise, passengers, and property shall be transported, *subject to the provisions of section thirty-four of this act*, and shall construct and keep such turnouts, gates, bridges, culverts, houses, depots, warehouses, and other buildings, machinery, and fixtures as may be necessary *to the completion and operation of the road. The rates of transportation for passengers and freight shall be fixed by the board of directors, and the same shall be kept posted up in all of the depots and public offices of the company for the inspection of the public.*

SEC. 19. At every annual meeting of the company the *board* shall make to the stockholders a *full* exhibit of the affairs and condition of the said corporation.

SEC. 20. It shall be lawful for the county court of any county in which any part of *the line of* said

er be obstructed. When any person shall own lands on both sides of said road, said company, when required to do so, may make and keep in good repair one causeway or other adequate means of crossing the same.

SEC. 19. The said company shall commence the construction of said road within ten years after passage of this act, and may from time to time construct so much thereof as may be in the ability of said company.

SEC. 26. *Said company shall commence the construction* of said road within ten years of the passage of this act, and shall complete the same within twenty years thereafter; and said company shall have power to use, manage, control and enjoy said road; shall determine what kind of carriages shall be used thereon, and by whom, and in what manner; and shall determine the terms, conditions and manner, in which merchandise, passengers and property, shall be transported; and shall have power to construct and keep such turnouts, gates, bridges, culverts, *toll* houses, depots, warehouses, *causeways*, and other buildings, machineries and fixtures, as may be necessary. *Said company may receive such tolls and freights as may be determined upon by the Directors, and shall keep posted up rates of toll and freight to be charged.*

SEC. 28. On every annual meeting of said company, the *Directors* shall make to the stockholders an exhibit of the affairs and condition of the company.

SEC. 29. It shall be lawful for the County Court of any county in which any part of the route of said

railroad may be *located* to subscribe to the stock of said company, *and issue the bonds of the county to raise funds to pay the stock thus subscribed, said bonds to bear interest not exceeding ten per cent., payable semi-annually, and to take proper steps to protect the interests and credit of the county*. Such county court may appoint an agent, *who shall be duly authorized to cast the vote of the county at all elections held by said company*, receive its dividends, and, *in general, to represent its interest in all matters pertaining to the said road.* Any city, town, or incorporated company may subscribe to the capital stock of said railroad company, and appoint an agent *with the same power and authority herein given to county agents*, and may take *all* proper steps to guard and protect the interests of said city, town, or incorporation.

SEC. 21. The said company shall have power to mark out, locate, and construct a railroad from the city of Louisiana, in Pike county, by the the way of *or near the town of* Bowling Green, in said county, and thence to such point on *either the north or south bank of the Missouri river as may be selected by the board of directors;* the said road to be located between the points thus indicated, on a line the most suitable and advantageous as regards distance, grade, cost of road, and permanent value of the same. *This act shall be so construed as to authorize the location of the line of said road across the Missouri river at any point that may seem most suitable for that purpose, and that may best subserve the interest of the company.*

SEC. 22. It shall be lawful for the railroad may be, to subscribe to the stock of said company; *and it may invest its funds in stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interest and credit of the county*. Such County Court may appoint an agent to represent the county, vote for it, and receive its dividends; and any city, town, or incorporated company may subscribe to the stock of said railroad company, and appoint an agent *to represent its interest, give its vote, and receive its dividends*, and may take proper steps to guard and protect the interest of said city, town, or incorporation.

SEC. 35. Said company shall have power to mark out, locate, and construct a railroad from the city of Louisiana, in the county of Pike, by the way of Bowling Green in said county, *to some suitable point on the North Missouri Railroad, intersecting said road between the southern limits of the town of Wellsburg, in Montgomery county, and the northern limits of the town of Mexico, in Audrain county*, thence to the Missouri river at the most eligible *point, on a line the most suitable and advantageous as regards distance, grade, cost of road, and permanent value of same.*

said company to mark out, locate, and construct a branch of its said road, commencing at a point on the line thereof, to be selected by the board, not further east than the town of Bowling Green, in Pike county, and running thence by the most practicable and advantageous route to any point on the Missouri river between the town of St. Aubert, in Osage county, and the city of Boonville, in Cooper county. Said branch road shall be known and designated as the "South Branch of the Louisiana and Missouri river railroad," and all subscriptions to the capital stock of said company intended to be used in the construction of said branch shall be made in separate books, opened under the direction of the board at such places as may be selected for that purpose. Such subscriptions shall specifically designate the objects for which they are made, and no part of the funds paid thereon shall be used in the construction of the main line of said road, but shall be faithfully applied to the building of such branch.	(None to correspond.)
SEC. 23. All of the powers and privileges herein conferred upon the board of directors in connection with the main line of said road shall likewise be exercised and enjoyed fully in the construction of the branch road herein provided for, and the same shall be constructed, operated, and managed in all respects in the same manner.	(None to correspond.)
SEC. 24. When any person shall cease to be a stockholder he shall cease to be a member of this company.	SEC. 32. When any person shall cease to be a stockholder, he shall cease to be a member of this company.
SEC. 25. The operations of said company shall be confined to the	SEC. 33. The operations of said company shall be confined to the

general business of locating, constructing, and using said roads and the acts necessary to carry the same into complete and successful operation.

SEC. 26. Said company shall have power to receive and hold loans, gifts, grants, and donations of lands, money, or bonds, in any quantity, from this state or the United States, and may sell, convey, pledge, or otherwise dispose of the same or any part thereof, and apply the proceeds to the construction of said roads.

SEC. 27. If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train, and other servants of the corporation, to put him out of the cars at any usual stopping place the conductor shall select.

SEC. 28. In forming a passenger train, baggage, freight, merchandise, or other lumber cars shall not be placed in the rear of passenger cars, and if they, or any of them, shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangements, and the conductor and engineer of the train, shall each and all be held guilty of intentionally causing the injury, and shall be punished accordingly.

SEC. 29. A steam whistle shall be placed on each locomotive engine, and be sounded at the distance of at least forty rods from the place where the railroad shall cross any road or street, and be kept sounding until it shall have crossed; and the said company shall be liable for all damages which shall be sustained by any person by reason of neglect thereof.

general business of locating, constructing, *making* and using said railroad, and the acts necessary to carry the same into complete and successful operation.

SEC. 34. Said company shall have power to receive and hold loans, gifts, grants and donations of lands, money, or bonds, in any quantity, from this State, or the United States; and may sell, convey, pledge, or otherwise dispose of *said land, money or bonds, or any part thereof*, and apply the proceeds of the same to the construction of said railroad.

SEC. 12. If any passenger shall refuse to pay his fare *or toll*, it shall lawful for the conductor of the train, and other servants of the corporation, to put him out of the cars at any usual stopping place the conductor shall select.

SEC. 13. In forming a passenger train, baggage, freight, merchandise, or other lumber cars shall not be placed in the rear of passenger cars, and if they or any of them shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement, and the conductor and engineer of the trains, shall each and all be held guilty of intentionally causing the injury, and shall be punished accordingly.

SEC. 14. A steam whistle shall be placed on each locomotive engine and be sounded at the distance of at least forty rods from the place where the railroad shall cross any road or street, and be kept sounding until it shall have crossed; and the said company shall be liable for all damages which shall be sustained by any person by reason of neglect thereof.

SEC. 30. If any person, while in charge of a locomotive engine running upon the railroad of said company, or while acting as a conductor of a car train on said railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

SEC. 31. If any person shall willfully do, or cause to be done, any act or acts whatsoever, whereby any building, construction, or work of said company, or any engine, machine, or structure, or anything appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the said company treble the amount of damages sustained by means of such offense.

SEC. 32. If any person shall willfully or maliciously place any obstruction upon the line of said railroad, whereby the lives of pa-sengers thereon shall be endangered, such person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months, or in the penitentiary for a term of not more than five years; provided, that nothing herein contained shall prevent the company from pursuing any other proper civil remedy at law in such cases.

SEC 33 This act and the company hereby incorporated, are exempt from the seventh, thirteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth sections of the first article of the act concerning corporations, approved November 23, 1855.

SEC. 15. If any person while in charge of a locomotive engine running upon the railroad of said company, or while acting as a conductor of a car train on said railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

SEC. 16. If any person shall willfully do or cause to be done any act or acts whatsover, whereby any building, construction or work of said company, or any engine, machine or structure, or anything appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the said company treble the amount of damages sustained by means of such offense.

SEC. 17. If any person shall willfully or maliciously place any obstruction upon the line of said railroad, whereby the lives of passengers thereon shall be endangered, such person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months, or in the penitentiary for a term not more than five years; *Provided*, That nothing herein contained shall prevent the company from pursuing any other proper civil remedy at law in such cases.

SEC. 36. This act, and the company hereby incorporated, are exempt from the seventh, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth sections of the first article of the act concerning corporations, approved November 23d, 1855.

SEC. 34. The said railroad company shall be subject to the provisions of the general laws of the state now in force, or hereafter to be enacted, applicable to the railroads in the state, in reference to the regulations, the rates or charges for transportation of freight and passengers on said road and its branch or branches; provided, that the foregoing provisions in regard to future legislation shall not take effect until ten years after the passage of this act. Said company shall file their acceptance of all the provisions of this act, within ninety days from the passage thereof, in the office of the secretary of state, signed by the president and secretary of said company, and attested with the seal thereof; and if such acceptance is not filed within said time, this act shall be null and void, and of no effect.

(None to correspond.)

(None to correspond.)

SEC. 11. The said corporation shall make an annual report to the Secretary of State of the operations of the year ending on the first day of December, which shall be verified by the oath of the Treasurer and acting Superintendent of operations, and filed in the office of the Secretary of State, by the third Monday in December in each year, and shall state first the capital stock, and the amount paid in; second, the amount expended for the purchase of land, for the construction of the road, for buildings, and for engines, and for cars, respectively; third, the amount and nature of its indebtedness, and the amount due the corporation; fourth, the amount received for the transportation of passengers, of mails, of property, and from all other sources;

fifth, the amount of freight, specifying the quantity in tons, of the products of the forests, of animals, of vegetable food, other agricultural products, manufactures, merchandise, and other articles; sixth, the amount paid out for repairs; seventh, the number and amount of dividends, and when made; eighth, the number of engine houses and shops, of engines and cars, and the character; ninth, the number of miles run by passenger, freight and other trains, respectively; tenth, the number of men employed, and their occupation; eleventh, the number of persons injured in life or limb, and the cause of such injuries; twelfth, whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

(None to correspond.)

SEC. 27. Dividends of the profits of the company shall be made annually, and oftener, if necessary; but the Directors may reserve or set apart a portion of the profits as a contingent fund to meet the expenses and losses.

(None to correspond.)

SEC. 30. When said road shall be completed, the company shall file a plat thereof in the office of the Secretary of State; and the Legislature may at any time require a statement from the company as to the progress of the work, the amount of business, and the receipts of the company; and the books and accounts of said company may at any time be investigated by a committee appointed by the General Assembly.

(None to correspond.)

SEC. 31. Said company shall keep a fair record of the whole ex-

> pense of constructing said road, and at the end of fifty years the State shall be at liberty to purchase said road by paying to said company the amount which it shall be valued at by persons to be mutually chosen by the State and by said company. But two years notice shall be given to said company of the intention of the State to purcha-e said railroad.

It is claimed that this act violates Article 11 Section 14 of the Constitution *supra*, Section 20 authorizing county subscriptions without requiring the consent of the qualified voters. To this we answer that if Section 20 undertook to confer a new power, it would be void for repugnance, and any subscription made, or bonds issued under it, would be illegal; but if, as we have insisted, the whole act is but a re-enactment of the law of 1859 with amendments, and Section 20 is but a re-enactment of Section 29 of that act, the objection fails, for, as before stated, the act of 1859 was not affected, nor the privileges conferred by it withdrawn or limited by the Constitution.

Further objection is made because the act of 1868 authorized the construction of a branch. This comes within the general power of amendment left by the Constitution in the Legislature. The company that built the branch is not a separate corporation from the one that built the main line. It is all one corporation, notwithstanding the twenty-second section sets apart all subscriptions intended to be used in the construction of the branch, and directs that no part of them shall be used on the main line. This was merely an arrangement to secure the proper application of the funds and to protect the subscription of this county from general creditors of the Company. Callaway had already subscribed on condition that her subscription should be used only on that part of the route lying within the county. There might be doubt whether this condition could be enforced in the event of the Company's insolvency, and the county might be made to answer like any other stockholder for any unpaid balance of its subscription, to the demands of the

contractors who had done work in distant counties; by the statute, counties are subject to the same liabilities as other stockholders. (Wagner's Statutes, 306 §21.) It was no doubt for the sole purpose of guarding against such a contingency that this provision was embodied in the law. It was on this view that the County Court made its order of June 17 1868 directing the county agent to transfer the stock already taken "to the branch books of said Company." In other words the subscriptions in point of fact originated under the act of 1859 and the sole effect of the act of 1868, so far as Callaway County was concerned, was to legalize the above mentioned condition; and this transfer to the branch books did not operate a cancellation of the subscription as first made.

Neither the case of State *vs.* Saline County Court, 51 Mo. 350, nor that of the State *vs.* Callaway County Court, Ib. 395 decides this act to be unconstitutional. Both of these cases were bills of injunction brought *in the name of the State* to prevent the county courts from issuing bonds to pay subscriptions made to this Company. The first question presented was, whether the Court had jurisdiction of such a suit, and upon this the Court was evenly divided, Wagner and Bliss J. J. holding opposite opinions, and Adams J. not sitting, having been of counsel in the case. Under a provision of the State law Mr. John R. Shepley of the St. Louis bar was called in to decide the case. He came to the conclusion that the suits could be maintained in the name of the State, and on that ground reversed the judgment of the lower court in the Callaway case, saying (at p. 405): "As the case now stands, having in the case of State *vs.* Saline County affirmed the jurisdiction, it (this case) will have to be reversed." He went on further to express, what must be regarded as a mere *dictum*, that the act of 1868 was void. From this decision Wagner J. dissented both on the question of jurisdiction, and as to the validity of the act of 1868, while Bliss J. concurred in the result (p. 406). That this concurrence was only upon the question of jurisdiction, and that he gave no opinion as to the validity of the act, will be seen by reference to his opinion in the Saline case (p. 377). In that

case the constitutional question did not fairly arise and was "but slightly if at all discussed at the hearings;" for this reason Judge Bliss did not consider it at all (p. 386). Judge Wagner and Special Judge Shepley did, however, consider it, and delivered opposing opinions, the former very emphatically upholding the validity of the act. Subsequently, a motion was made for a rehearing, but before it was argued a change took place in the court. Judge Bliss' term expired, and by constitutional amendment the number of the judges was increased from three to five. The motion was heard before the new court and that body declined to consider the question of constitutionality, saying that "*it was not material to the settlement of the main question; the judgment of the court would be just the same, let it be decided one way or the other.*" (Per Vories J. p. 394.)

It is manifest that the statement of counsel for plaintiff in error in his ninth point that the invalidity of the act of 1868 has been adjudged by the Supreme Court of Missouri is erroneous. Such was the opinion of but one of the six judges, who at various times sat in the case—and he not one of the regular judges of the Court.

II.

But if it were conceded that the act of 1868 is void, the plaintiff's right is none the less secure. As a *bona fide* purchaser he had only to look at the bond and the law. If he found authority in the law for the issue of such a bond, he could buy without further inquiry as to the compliance with its requirements.

Knox County *vs.* Aspinwall, 21 How. 544.
Town of Coloma *vs.* Evans, and
Marcy *vs.* Oswego, decided by this Court, October Term 1875 and reported in 3 Central Law Journal 325 and 389.

If the act of 1868 failed for repugnance to the Constitution, the act of 1859 would stand in full force, unimpaired by the abortive effort at amendment. If therefore he should conclude

that the act of 1868 was void, he would have a right to rely on the act of 1859 as still in force, and the twenty-ninth section of that act authorized the issue of such bonds as these. The only condition attached to the exercise of the power was that part of the route should be within the county. That being a fact peculiarly within the knowledge of the County Court, their issue of bonds reciting the authority of the act is very conclusive. The *bona fide* holder is not chargeable with notice of location of the route.

Barrett *vs.* Schuyler County, 44 Mo. 197.

It may be added that in the Saline County case the majority of the Court, while declining to hold the act of 1868 void, seem to have concurred with Mr. Shepley in considering that subscription void on the ground that Saline County lying south of the Missouri river and being for that reason one of the counties through which the road could not run under the original charter, and therefore not authorized to subscribe to it, could not under the Constitution be authorized to subscribe, except with the assent of the qualified voters. For this reason they seem to have concurred in holding the twentieth section of the amended act inapplicable to Saline County, and the bonds issued in supposed pursuance of it illegal. From this the inference has been drawn that the bondholder is bound to know localities and to determine for himself whether or not the road is located in a county authorized to subscribe. As applied to the case then before the Court such an inference would be correct. The original charter authorized the construction of the road to the Missouri river, through the counties of Pike, Audrain, Montgomery, etc., which counties are described by the statutes of the State as lying on the north side of the river, while Saline is described as lying on the south side. (Wagner's Statutes, 353 §1.) Of these provisions of law a bondholder would of course have to take notice; he would therefore be bound to know both as matter of fact and of law that Saline County could not be on the original line. But the statute describes Callaway as on the north side. There is, therefore, nothing to prevent the operation of the ordinary rule, which justifies the bondholder in assuming from the fact of

the issue of the bonds that the route lay within the county. In point of fact it was the original intention to build it on that line, the Court below found that surveys of that route had been made before the act of 1868 was passed, and the only road ever completed has been built and operated on that line.

CONCLUSION.

Power and its exercise.—In order to determine the validity of the bonds sued on, there are but two propositions involved.

1st. Did the power to make the bonds sued on exist?

2d. Did the defendant below—plaintiff here—exercise the power granted and actually issue the bonds?

The Act of March 10th 1859 created the corporation known as the Louisiana and Missouri River Railroad Company, invested it with power "to make out, locate and construct a railroad," the city of Louisiana in the county of Pike on the Mississippi River being the initial point, Bowling Green in same county, Mexico in Audrain county, and Wellsburg in Montgomery, being fixed intermediate points, and the objective point the most eligible point on the Missouri River.

The power thus granted clearly and definitely fixed the route of the road to be built—commencing on the Mississippi River, thence through the counties of Pike, Audrain and Montgomery, to the North Missouri Railroad, thence to Missouri River.

This is a legislative location, a route well marked out, from the Mississippi to the Missouri, confined to the counties of Pike, Audrain and Montgomery, and in reaching the most eligible point on the Missouri river, necessarily forced through Callaway County. The Legislature having thus unmistakably defined and fixed the route, at same time authorized county subscriptions.

(Sec. 20) "It shall be lawful for the *County Court of any county in which any part* of the *route* of said railroad may be to *subscribe* to the stock of said Company * * * and issue the bonds of such county, &c." The counties of Pike, Audrain and Montgomery, being named specially, they were clearly by the act itself authorized at once to subscribe to the

stock of the Company and issue bonds from the fixed intermediate points on the North Missouri Railroad, Mexico and Wellsburg, to the most eligible point on the Missouri River, the route fixed by the Legislature, with the legislative consideration, "*distance*, grade, cost of road, &c." Callaway County is of necessity traversed by the route defined in the charter; this road which the charter authorizes to be built cannot be built outside of Callaway County, "on a line the most suitable and advantageous as regards distance, grade, cost of road, &c.," to the most eligible point on the Missouri River, with the initial point, the city of Louisiana, and intermediate points, Bowling Green and Mexico or Wellsburg, fixed. Callaway is as much declared to be one of the counties traversed by the route of the road to be built, as Pike County. The Legislature having thus fixed the route of the road provided, means to build it, by empowering the counties in which any part of the *route* of said Railroad Company may be, to subscribe to the stock, issue bonds, &c.; the use of the word *route* in lieu of *located*, *surveyed*, *built*, &c., has a special significance. The Legislature confined the corporation to that part of the State between the city of Louisiana on the Mississippi River and not further west than Mexico or east than Wellsburg and the most eligible point on the Missouri River, and called this the *route* of the road, and authorized all counties, within *this route*, to subscribe to stock and issue bonds. No survey, no built road, were prerequisites to a subscription, the establishment of the *route* by the charter itself was all sufficient, it was legislation *sui generis*, growing out of local jealousies, intended to confine the road to a specific *route* or direction.

The power thus shown to exist, did defendant exercise it and issue the bonds sued on?

The Court below finds as a fact that the bonds sued on were issued by Callaway County, a copy of a bond appearing in printed record page 39. January 10th 1868 Callaway County subscribed to the capital stock of the Louisiana and Missouri River Railroad Company $500,000, on conditions. (Order of subscription, printed record page 41.)

This subscription was to the capital stock of the corporation created by the act of March 10th 1859, was made January 16th 1868, the day of the original order as appears by subsequent order of the County Court of Callaway County, 28th of October 1868 (page 42, printed record), and it was in satisfaction of this subscription the bonds sued on were issued. The bonds themselves on their face, recite that they were issued by authority of the act of March 10 1859. It is immaterial that there was appended to this recital, a further recital that the original act was amended, which recital may be true or false, the material recital is full and complete, "by authority of an act of the General Assembly of the State of Missouri, approved March 10th 1859." It is clear that Callaway County did in the exercise of the power granted by the act of March 10th 1859, issue the bonds sued on.

Having thus shown the existence of the power, and its exercise in the issue of the bonds sued on, the validity of the instruments in the hands of a holder for value cannot be questioned.

Construction of Sec. 29, *Act of* 1859.—Sec. 29 of Act of 1859 did not impose any condition precedent to the exercise of the power to subscribe by the County Court of Callaway County. The words "*it shall be lawful for the County Court of any county in which any part of the route of said railroad may* be to subscribe, etc.," merely confined the power of subscription to the counties traversed by the route fixed by the charter, but if held to be a condition precedent to the exercise of the power, the County Court of Callaway County could alone decide that the condition had happened, and the exercise of the power of subscription upon a condition of which they are the sole judges, the recital of the bond, "by authority of an Act, * * approved March 10 1859," is a clear estoppel, the bonds being in hands of *bona fide* holders for value.

Commencing with Knox County *vs.* Apinwall, and ending with last case reported, 16 Wall 641, this Court has uniformly held this to be the rule.

Should this provision of Section 29 be held to be a condition precedent, involving actual location of road, the county of

Callaway making its contract of subscription of $500,000 with Louisiana and Missouri River Railroad Company, upon condition of adoption of one of the two routes mentioned in the order of subscription, these routes having evidently been duly surveyed, and the Railroad Company accepting the subscription, was a location in fact of the road through Callaway County, and in the light of existent facts at this day (the built and operated road over this very line), both parties to this contract of subscription must have so understood when the subscription was accepted by the Louisiana and Missouri River Railroad Company, that it was a location of the line of the road through Callaway County.

The Act of March 10 1859 must stand as of itself full and ample, in all the requirements essential to delegation of power, to sustain the issue of the bonds sued on. The subscription of the 16th of January 1868 is the subscription, to satisfy which, these bonds were issued, it is the sole subscription of $500,000 made by Callaway County, was made under Act of March 10th 1859 to the Louisiana & Missouri River Railroad Company, the corporation created by that Act, and must find its authority under it. The Act of March 10 1859 stands upon the statute book to-day unrepealed if it be true that the legislation of 1868 was a nullity ; it furnished ample legislative authority upon which the bondholder with confidence may rely.

The judgment below, is placed on the true ground. Printed Record p. 59 :

" We place our judgment on this ground. The plaintiff is a *bona fide* holder of the bonds issued by the county. These bonds recite that they are issued by virtue of the power conferred upon the county by the original charter of the Company of March 10, 1859, as amended by the act of March 24, 1868. The act of March 10th, thus recited, did give the power, and that power is not taken away by the amendatory act of 1868, but, according to the decisions of the Supreme Court of the State above mentioned, remains unaffected by the provisions of the Constitution of 1865, requiring a popular sanction to such subscriptions. All of the subscriptions were made to the Louisiana & Missouri River Railroad Company, the original corporation, and not to the branch mentioned in the amendatory act.

"As there was legislative power in the county to make the subscription and to issue the bonds, and as County Court had exercised this power and issued the bonds, which have found their way into the hands of the plaintiff, a *bona fide* holder for value, the decisions of the Supreme Court of the United States conclude the county from making the defense here attempted, and this whether the *amendatory act be or be not void*, and whether the county was or was not authorized to transfer the subscription to what is called the South Branch, or to apply the money raised by the sale of the bonds to the building of that branch."

The judgment below should be affirmed.

JOHN D. STEVENSON,
T. K. SKINKER,
Counsel for Defendant in Error.